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The time is quite opportune to regret and deprecate the tendency of courts and lawyers in the determination of causes to dispense with any original research into the principles of the law applicable to the particular state of facts and to rely too strongly on the authoritative utterances of other tribunals. It may be that the press of litigation at the present time offers very little time, even where there is the inclination, to reach independent conclusions by original methods of reasoning and research. Nevertheless, it is very apparent that some courts are ready to yield with too little reluctance to the temptation to accept some other court's reasoning without testing the premises as to their soundness as general principles of law. This practice has made American case law, with a few notable exceptions, quite insipid, uninteresting, and lacking in authoritative reasoning. It seems that all an attorney is expected to do on a question of law before the court is to cite a few cases apparently on all fours with his and demand a decision, and where the authorities seem to be overwhelmingly in favor of a certain proposition the court is not even expected to reason about it. Mr. Bishop says that there are enough of these questions on which the authorities seem to be uniform but which are decided incorrectly on principle, and in regard to which anxious and eager litigants have been discouraged by "big" lawyers, to keep in comfortable circumstances, many of the younger generation in the profession who sometimes find the struggle for existence too intensely engaging. It would seem to be a secret of success, therefore, at least to the young practitioner, to attain a thorough acquaintance with the fundamental principles of law, and an ability to reason out what the law ought to be before consulting the mass of authorities.

Whether a court can be influenced more by clear, original argument than by the mere citation of authority, we do not believe to be at all doubtful. All courts, the members of which lay any claim to the legal ability, favor an oral argument of counsel in preference to the dry citation of authority in printed briefs. Thus, Mr. Justice Harlan, of the United States Supreme Court, has this to say: "It is a matter of serious regret and concern that the practice of oral argument appears to be falling into disuse. The idea seems to have become general among members of the bar that we prefer arguments presented in the form of written briefs. Such is not the case. There are many times when nothing can take the place of the personal presentation. Briefs are well enough in their way, but it very often happens that the real point upon which a case turns may be overlooked in a brief, while an oral argument may serve to bring it home to the court. A special emphasis, a striking simile, may throw new light on an intricate problem, and perhaps reverse a judgment in the mind of the court." The peculiar value of oral argument lies in the fact that the court and counsel are able to pick to pieces the authorities and probe the reasons of the law as applicable to that particular case. But it is in such cases that an attorney may well quail before the quizzing of the court where he has no more intimate acquaintance with the law of his case outside of the decided cases.

A court is not always unwilling on a difficult or novel point to altogether disregard the authorities and consider the question as *res nova*. Thus only recently one of the justices of the New York Supreme Court is reported by the *New York Tribune* as giving voice to the following striking sentiments quite pertinent to this question: "I have not deemed it necessary to cite authorities in support of the views which I have expressed. It is enough that they must commend themselves to the rational mind. It seems to be considered in some quarters that judges should not think any more on their own account; that they should spend their lives mousing through mouldy libraries in search of what other judges in a less enlightened age have said, not even upon the immediate question in hand, but upon some matter more or less distantly related. It is thought to be presumption to let one's own bucket down into the living well of reason, instead of being content to lick up from the muddy, trampled earth around it the green and stagnant leakings of the past. And so the science of law,

which was once deemed the perfection of human reason, is being left behind by every other science."

The particular favor of the courts, however, to oral argument will extend only to such in which the orator gives evidence of a thorough acquaintance, not only with the fiat of the authorities, but with the reasons and principles underlying the whole question. Under such circumstances a court is not made to feel that it is being bluffed, coerced or crushed by any "weight of authority" into making its decision, but on the contrary feels an added dignity when counsel approach them as the equal of any other court, and, by indulging the presumption that the case under review is *res nova*, request a decision on reason and principle, rather than demand it on authority. Indeed, it is not an extremely rare occurrence for an attorney appearing before a court almost bankrupt as to authorities and thus compelled to rely altogether on reason and principle, to win his case over his apparently more fortunate opponent who had satisfied himself with nothing more than the preponderance of authority. Of course, we do not mean to convey by this that in every case where the authorities preponderate reason and principle would dictate an opposite conclusion,—on the contrary, they will generally be found together; but, since it is human to err, there will be found instances, not a few, in which principle and reason have been lost in confusion or prejudice. Out of the latter and back to the former the diligent attorney may lead the court by a clear conception and forcible statement of what the true rule ought to be. In such cases the unprejudiced mind of the court is always ready to follow.

NOTES OF IMPORTANT DECISIONS.

LIFE INSURANCE—RIGHT OF INSURED TO RESCIND CONTRACT AND RECOVER PREMIUMS BECAUSE OF MISREPRESENTATION OF MEDICAL EXAMINER.—Quite an interesting and important question in the law of life insurance was recently decided in the case of Bennett v. Insurance Company, 64 S. W. Rep. 758. Although two judges dissented, we feel satisfied that, in view of the able reasoning of Justice Wilkes, that master-mind of the southern judiciary, the decision loses none of its effectiveness. In this case a medical examiner for a life insurance company falsely and fraudulently wrote different answers than those given by the assured to questions concerning his physical condition. In an action by the assured for the rescission of the contract, the court held that while such false answers would have been a *prima facie* defense to an action on the policy, difficult to meet after the death of assured, he was entitled to repudiate the contract and recover the premiums paid. It must be admitted that there are easily two sides to this question, to both of which reason seem to lend aid and encouragement. On the side of the complainant it was argued that the medical examiner was a special agent, and that he exceeded his authority in writing down answers contrary to direction, and hence the company was not bound thereby; so that, as a matter of law and fact, the complainant had no protection, and the payment of the premiums was without a consideration. On the other hand, the company insists that it could not have successfully defended against the policy because of the fraudulent conduct of its own medical examiner, so that complainant could have enforced the contract, and the policy in the event of death would have been collectible. Of course, it is a well settled rule of life insurance that the insurer cannot defend upon the ground that the answers were not true if at the same time it appeared that the examiner had written down unauthorized and untrue answers. Pudritzky v. Knights of Honor, 76 Mich. 428, 43 N. W. Rep. 373; Assurance Society v. Rentlinger (Ark.), 25 S. W. Rep. 835; Clemens v. Supreme Assembly (N. Y. App.), 30 N. E. Rep. 496, 16 L. R. A. 33; Insurance Co. v. Baker, 94 U. S. 610; Insurance Co. v. McMurdy, 89 Pa. St. 363; Insurance Co. v. Eshelman, 30 Ohio St. 647; Insurance Co. v. Russell, 77 Fed. Rep. 94. This principle would seem to favor the position of the defendant. But the court meets this contention as follows: "But while it is true that, upon the facts being fully developed, the company could not have defended against this policy, it is evident the assured was put to a great disadvantage, and possibly it would have been impracticable to develop the facts after the death of the assured. We will suppose the company to have been sued upon the policy after the death of the assured. It is apparent from the record in this case that it could have been readily shown that false statements were made in the application, and this, without more, would have avoided the policy. In order, then, to recover upon it, complainant must have shown the fraud, and virtually reformed the application. But this could only be done by the assured himself, and, he being dead, the application could not have been reformed, and the company would have escaped liability. We are of opinion, therefore, that complainant was not efficiently protected by this policy, and, upon discovering the fraud, he was warranted in repudiating the contract, and treating it as though it had never been made."

CONTRACTS—PRESUMPTION AGAINST IMPLIED CONTRACT FOR SERVICES IN FAMILY.—The af-

fection of the child for its parent is not always disinterested, and it is not always the case that services are rendered to the latter without some expectation of reward, either by will or otherwise. The law, however, holds firmly to what it believes the ideal relation ought to be, and indulges the presumption that the motive of service in such cases is purely love and affection. Thus, in the recent case of Gorrell v. Taylor, 64 S. W. Rep. 888, the Supreme Court of Tennessee held that where a daughter and her husband live with her father and care for him in his old age, it is to be presumed that the services were rendered gratuitously, from motives of affection, unless there be a showing of an express contract, or such circumstances as will establish an intention on the one part to charge, and on the other to pay. This is the well settled rule in cases of children. Children performing services of this character for a parent are presumed to act gratuitously, from motives of affection and duty; and to entitle them to recover compensation therefor, the burden is upon them to overcome the presumption by showing either an express contract, or such exceptional facts and circumstances as will establish an intention on the one part to charge and on the other to pay, notwithstanding the relation of kinship. Forsee v. Matlock, 7 Heisk. 425; Riley v. Riley, 38 W. Va. 290, 18 S. E. Rep. 569, approved in Plate v. Durst (W. Va.), 24 S. E. Rep. 580, 32 L. R. A. 406; Ulrich v. Ulrich (N. Y.), 32 N. E. Rep. 606; Weir v. Weir's Admr., 3 B. Mon. 645, 39 Am. Dec. 487; Poorman v. Kilgore, 26 Pa. 365, 67 Am. Dec. 524; Dodson v. McAdams, 96 N. Car. 149, 2 S. E. Rep. 453, 60 Am. Rep. 408. And the presumption of gratuitous services goes beyond the real blood relation of parent and child. It extends to stepchildren (Williams v. Hutchinson, 3 Comst. 312, 53 Am. Dec. 301; Ellis v. Cary [Wis.], 42 N. W. Rep. 252, 4 L. R. A. 55); to grandchildren (Dodson v. McAdams, *supra*); to brother and sister (Taylor v. Lincumfelter, 1 Lea, 83; Hayes v. Cheatham, 6 Lea, 1); and, indeed, to all relatives living together in the same family; but it naturally grows weaker, and therefore becomes more easily rebutted, as the relationship recedes. In the recent case of Bosard v. Powell, 79 Mo. App. 184, however, it was held that in a suit against the estate of a deceased person to establish a claim for his care, it is sufficient to prove an implied contract to pay for the services, and the rule is nowise different when the relation of parent and child exists than between strangers; the only difference being that in the one case the inference may be drawn, that the service was gratuitous, while in the other, no such presumption arises. In the following recent cases the court indulged the presumption of gratuitous services: parent and child (Poole v. Baggett, 110 Ga. 822, 36 S. E. Rep. 86; Moore v. Moore, 78 N. W. Rep. 495; Wall v. Wall, 69 Ill. App. 389; *In re* Stewart's Estate, 47 N. Y. S. 1056; Newell v. Lawton, 38 Atl. Rep. 946); receiving home from relatives in return for services (Beale v. Hall, 97 Va. 383, 34 S. E. Rep. 53); services of child adopted from orphan's home (Graham v. Stanton, 177 Mass. 321, 58 N. E. Rep. 321); care of half-sister by brother (Fuller v. Estate, 51 N. E. Rep. 373); treating stranger as member of family (Frailey's Admr. v. Thompson, [Ky. 1899], 49 S. W. Rep. 13); legal services of attorney for step-daughter (Baxter v. Gale [Minn. 1898], 76 N. W. Rep. 954); care and services of brother for brother (Chapman v. Chapman, 87 Ill. App. 427); services of mothers-in-law to son-in-law (Poole v. Baggett, 110 Ga. 822). It has been held that the relationship of brothers-in-law raises no presumption of family relationship, such as will defeat a claim for services or board. Shumberger v. Hoy (Pa.), 7 Pa. Sup. Ct. Rep. 206.

CARRIERS OF PASSENGERS — LIABILITY FOR INJURY TO PREGNANT PASSENGER.—The age of man's inhumanity to man shows signs of approach in many directions. The "modern spirit of haste" and commercialism in many of its phases tends to depreciate the sanctity of life and the value of personal liberty and convenience. A strong protest against this innovation, however, is being manifested and is well illustrated in the recent case of St. Louis Southwestern R. R. v. Ferguson, 64 S. W. Rep. 797. In this case a pregnant woman, while a passenger on a railroad was injured by the latter's negligence and gave premature birth to twins, occasioning her great injury and mental suffering. The court of civil appeals of Texas held that the railroad was liable for the injury although such negligence would not have injured an ordinary passenger, and although the company or its agents had no knowledge of the passenger's condition. The authorities on this question are conflicting, but the undoubted weight of both reason and authority sustain the position of the Texas court. The most outspoken authority denying that any liability attaches to a carrier for injuries to a person in feeble health, is that of Car Company v. Barker, 4 Colo. 344, 34 Am. Rep. 89. This was a case in which a woman was negligently exposed to extreme cold during the menstruating period, whereby she suffered injury, and it was held that the injury was a remote, and not the proximate result of the negligence complained of; and the court, in the course of the opinion, takes occasion to say that: "Where physical weakness or disability is apparent to, or is brought to the attention of, the carrier, undoubtedly that high degree of care which the law imposes upon him would, under certain circumstances, involve duties in reference thereto,—as that he shall allow an aged, infirm, or crippled person a reasonable time in which to get on or off the coach or car, having reference to their crippled or infirm condition. * * * Where no duty is imposed, no liability can attach. Another passenger might have suffered equally serious consequences from

the effect of the cold upon a wound in the foot, superinducing inflammation, and possibly necessitating amputation. Can it be said that the law imposed upon the carrier an enlarged duty having reference to the wound, and that the added risk of traveling in this condition must be assumed by him, and not by the passenger from whose personal condition it springs? We think not. * * * The cars of a railroad company are not hospitals, nor their employees nurses. Persons who are ill have a right to enter the cars of a railroad company, and travel therein. As a common carrier of passengers, the company has no right to prevent them. But the increased risk arising from conditions affecting their fitness to journey—certainly where they are unknown to the carrier—must rest upon their own shoulders." See also Spade v. Railroad (Mass. 1899), 52 N. E. Rep. 747; Fairbanks v. Kerr, 70 Pa. St. 86, 10 Am. Rep. 664; Jackson v. Railway Co., 87 Mo. 422, 56 Am. Rep. 460. The Texas court in this case expressed strong disapproval of the Colorado decision and referred to the case of Brown v. Railway Co., 54 Wis. 360, 11 N. W. Rep. 364, in which the Supreme Court of Wisconsin, in commenting on that decision, said: "This decision is supported by the principles of neither law nor humanity. It, in effect, says that, if an individual unlawfully compels a sick and enfeebled person to expose himself to the cold and storm to escape worse consequences from his wrongful act, he cannot recover damages from the wrongdoer, because it was his sick and enfeebled condition which rendered his exposure injurious. Certainly, such a doctrine does not commend itself to those kinder feelings which are common to humanity; and I know of no other case which sustain its conclusions." We feel no hesitancy in adopting the position of the Wisconsin case on principle. The carrier in such cases is not chargeable with an injurious turn of a passenger's infirmities while under its care, but for the result of its negligence. If the serious turn in the passenger's condition would not have happened out for the negligence of the carrier, the latter is liable. Any other rule would unjustly discriminate in favor of the strong and healthy as against those who are weak and infirm. It would be absolutely without fairness and unreasonable. See also, as sustaining this statement of the rule, Car Co. v. Dupre, 54 Fed. Rep. 646 (a case of pregnancy); International & G. N. Ry. Co. v. Gilmer (Tex. 1898), 45 S. W. Rep. 1028 (a case of infirmity of age); Central Texas & N. W. Ry. v. Holloway (Tex. 1899), 54 S. W. Rep. 419; Sawyer v. Dulaney, 30 Tex. 479 (a case of pregnancy).

PROPOSED PROVISIONS AGAINST FRAUDULENT DIVORCES.

No clients, as a rule, are more willing to pay for legal relief than clients desiring a divorce, and the temptations to which the legal profession has thus been exposed cannot be said to have been valiantly or successfully resisted. As a result many means have been devised for imposing upon both courts and defendants, and there is to-day no scandal connected with the administration of justice in the United States which at all approaches the scandal of fraudulent divorces. Any divorce which is obtained by making out a false case is fraudulent. The fraud may consist in both parties colluding to pretend that an offense has been committed, or in one party's proving an offense by perjury—sometimes, to facilitate his case, concealing the fact or the nature of the suit from the defendant; or, it may consist in the parties or one of them bringing the suit in a court which has no jurisdiction over their marriage *status* and proving a domicile which is fictitious. There is a most important distinction between a divorce obtained on false grounds and one obtained on a fictitious domicile, the latter being void everywhere, but the former, like ordinary judgments obtained by irregularity, surprise or fraud, in a court having jurisdiction, being voidable only by the court which granted it.[1] It is only with divorces based upon fictitious domicile that this article will deal. In 52 Cent. L. J. 484, the Atherton case, decided by the Supreme Court of the United States on April 15, 1901, is given in full and annotated. The law established by this case, and by a multitude of other cases in England and the United States, is that no state has the right through its courts to grant any divorce unless the parties are, or one of them is, domiciled within its boundaries.

"Domicile" is defined by Dicey as one's permanent home,—the place or country either, first, in which he in fact resides with the intention of residence, or second, in which having so resided he continues actually to reside though no longer retaining the intention of residence, or third, with regard to which having so resided there, he retains the intention of residence though he in fact no longer resides there. And in divorce statutes, where the word "residence" has been used, it has nearly always been construed to mean "domicile" under the first two of Dicey's divisions of his definition. There was a time when courts, in determining the grounds of divorce jurisdiction, argued, upon the theory

[1] See People v. Dowell, 25 Mich. 242.

that a marriage was a contract, that the laws of divorce of the place where the contract was made became incorporated into the contract, and that such marriage could therefore be dissolved or annulled only in accordance with such laws. Other courts maintained, on the theory that a marital offense was a penal offense, that the state where the offense was committed had the right to punish it by dissolving the marriage. But such contentions, have been forever settled, and there is now no rule of international and interstate law better established than the rule that jurisdiction for divorce ought to depend, and does depend, essentially upon domicile.

A few years ago a commission or league of some kind was formed by representatives from the various states for the purpose of promoting uniformity in the divorce laws of the United States, and thus removing the temptation from the inhabitants of states where divorce laws are stringent to move temporarily, for the purpose of obtaining divorce, to states where the causes for divorce are many. This committee, it seems, found it hopeless to reach any agreement as to uniformity in the grounds of divorce, but, in order that their work might not be all in vain, prepared and suggested a law as to divorce procedure, by which they thought that some of the fraud which so often creeps into these cases might be prevented. The law suggested by this committee is open to so many grave objections, and is so faulty in construction, that it seems best here to set it out in full, and then to formulate the objections to it. The first four sections of this act read as follows: Section 1. No person shall be entitled to a divorce for any cause arising in this state, who has not had actual residence in this state for at least one year next before bringing suit for divorce, with a *bona fide* intention of making this state his or her permanent home. Sec. 2. No person shall be entitled to a divorce for any cause arising out of this state, unless the complainant or defendant shall have resided within this state for at least two years next before bringing suit for divorce, with a *bona fide* intention of making this state his or her permanent home. Sec. 3. No person shall be entitled to a divorce unless the defendant shall have been personally served with process, if within this state, or if without this state shall have personal notice duly proved and appearing of record, or shall have entered an appearance in the case. But if it shall appear to the satisfaction of the court that the complainant does not know the address nor the residence of the defendant, and has not been able to ascertain either, after reasonable and due inquiry and search continued for six months after suit brought, the court or judge in vacation may authorize notice by publication of the pendency of the suit for divorce, to be given in manner provided by law. No divorce shall be granted solely upon default, nor solely upon admissions by the pleadings, nor except upon hearing before the court in open session. Sec. 4. After divorce either party may marry again, but in cases where notice has been given by publication only, and the defendant has not appeared, no decree or judgment for divorce shall become final or operative until six months after hearing and decision.

The objections may be divided into two classes,—those applicable to the first two sections providing for "residence" as a basis for jurisdiction, and secondly, those against the other sections providing for special notice to defendants and putting various delays and difficulties in the way of plaintiffs. *First*—The first two sections are defective in that they make actual residence and not domicile the basis for divorce jurisdiction, thus excluding from its courts and states domiciled citizens temporarily absent for business, health or pleasure. The first section provides for actual residence of the plaintiff; the second provides only for residence of the plaintiff or defendant. Why this difference? Then, too, there is absolutely no reason why jurisdiction, if the offense were committed out of the state, should be acquired by a residence of either of the parties, but if the offense were committed in the state, only by the residence of the plaintiff,—a distinction made in these sections. Nor is there any good reason why the residence required should be one year if the offense were committed in the state and two years if it were committed out of the state. What possible difference does it make where the offense was committed? And not only that, but how would such a provision apply to causes for divorce covering a space of time, like abandonment, habitual drunkenness or non-sup-

port. All reference to the place where the offense was committed ought to be excluded. It is true that "residence," used in divorce statutes, has been generally construed to mean "domicile." But why use a word which is suspectible of so many different meanings in different classes of cases? Residence has had to be construed, and has been given different meanings, in statutes relating to testamentary law, relating to non-resident attachments, relating to ownership of slaves (in former times) and relating to the qualification of voters; and there seems to be no justification for using this word in divorce statutes now when all courts, in speaking of divorce jurisdiction, uniformly refer to it as dependent upon domicile. Domicile includes actual residence past or present, but "actual residence" excludes domiciled citizens residing abroad. Under the proposed law a resident of the United States holding a diplomatic appointment in England and residing there would not sue for divorce at all, without returning home and actually residing there for a year, or two, as the case might be.

Second—Objections to Section 3.—(*a*) The requirement of personal service when "the defendant is within the state" is ambiguous and unreasonable. A non-resident with no home or address within a state, has no right to expect personal summons from the courts of that state. For example: The mere fact that a debtor happens to be in the state does not allow the statute of limitations to begin to run in his favor; his presence must have been known to his creditor in time to have enabled the latter to have gotten process served.[2] In all cases other than divorce cases a resident must be personally served, but a non-resident may be served by publication or personally if he can be found; and there seems to be no particular reason to make a different rule for divorce cases, and especially no reason to insert within the statutes a clause which might invalidate a divorce if the defendant, though a non-resident, had secretly been within the state. (*b*) The requirement of actual notice to the defendant or a delay of six months before publication is unreasonable. The framers of the proposed law in aiming to utterly annihilate fraudulent suitors have forgotten the wrong they may thus do to *bona fide* applicants for divorce. (*c*) The requirement of a "hearing in open session" is ambiguous and futile. What does it mean? Must the testimony be taken in open court, or must it be read and commented upon in open court? What is the object of such a provision? What good could thus possibly be secured unless through publicity obtained by the appearance of scandalous details in the press? And even if this were a good provision in non-contested or *ex parte* cases, what good could it do in contested cases? The proposed law seems almost like a threat of blackmail against honest applicants for divorce.

Third—Objections to Section 4.—This section intends to provide that a decree of divorce shall be made final only six months after it is entered, if it is founded upon notice by publication. By section 3 notice by publication can be given only after six months' failure to give actual notice and would itself take several months more. Before or during those months the defendant might acquire actual knowledge of the case (though not served with notice) and yet offer no defense and have no defense to offer. Why should this cause the plaintiff a delay of six months more? Why, in any case, should a delay of over twelve months be interposed for the sake of a guilty and absconding defendant? The same injustice is seen in this section as in the other sections, and arises from the fact that the person who drafted the law cared nothing what punishment might be inflicted upon innocent persons so long as dishonest ones might be hampered. When persons desiring a divorce are unscrupulous enough to impose upon a court by proof of a fictitious domicile they will also be dishonest enough, if this is necessary to impose upon a court by proving a fictitious ground for divorce. And legislators, instead of being willing to hamper the whole procedure of their courts, for the purpose of disappointing non-residents with fraudulent intentions, should be anxious, first of all, to protect the people of their state, and secure for them prompt and reasonable remedies for their wrongs. The law's delay is a crying evil, as delay is often as fatal as defeat. The proposed law deliberately aims to secure unnecessary and unconscionable delays, and treats persons seeking divorce as if they were

[2] Hysinger v. Baltzells, 3 G. & J. (Md.) 158, 162.

bad children or even criminals, entitled to only fatherly consideration or no consideration at all. As divorces obtained upon a fictitious domicile are absolutely void and can be so held in any court in any proceeding, the necessity for preventing the granting of such divorces is minimized. It would be different if outsiders could come into a state and fraudulently obtain valuable and valid documents.

A Remedy.—The existing evil which the interstate commission nominally desire to remedy is the granting in a state of divorces to persons not domiciled there. Such divorces are granted because courts accept the testimony of the complainant as to the *bona fides* of his residence and as to his "*animus manendi.*" As long as mere proof of a person's presence in a state and his own statement of his intention to make it his permanent home is accepted as proof of domicile, the evil must continue, though making divorces difficult for all will, of course, hamper the dishonest as well as the honest. The true remedy would therefore seem to be to amend the law as to proof of domicile. Making jurisdiction dependent upon the domicile of one of the parties, a law might be adopted as to the proof of domicile, somewhat as follows: "The domicile of the plaintiff or defendant within this state must, before any divorce shall be granted, be established by proof. If the fact of such domicile be not denied, it may be established by proof that the party whose domicile is in question has actually resided within the state for two years next previous to the institution of the suit. If the fact of such domicile be denied, or if such party shall not have resided in the state two years as aforesaid, the fact of such domicile must be established, both as to the element of residence and as to the element of intent, by proof of such external facts that from them the court shall find, beyond a reasonable doubt, both the fact of actual residence and the intention of residence involved in domicile as hereinbefore defined; and to enable the court to find the existence of such domicile, *vel non*, the plaintiff must produce evidence of the following facts: the place of the marriage and the domicile of the parties, respectively, prior to their marriage; the place or places of the parties' matrimonial residence after the marriage; the duration of the actual presence in this state of the party whose domicile is in question; the reason of such party's removal, if any, to this state; the reasons for such party's absences, if any, from this state; the nature of such party's home in this state, whether a hotel or rented house or homestead, etc.; the location of such party's business interests and of his or her friends and relations within or without this state; the existence or not of a home in another state at times occupied by him or her; the place, if any, where such party votes; the place, if any, where such party pays taxes upon his or her personal property. And if the court upon consideration of the evidence shall have any reasonable doubt of the fact of domicile, the suit may be dismissed or the cause may be continued that fuller proof may be taken, as the court in its discretion shall determine."

Then, as to notice, it seems as if a provision somewhat like the following would be ample to prevent fraud:

"In divorce cases the same process by summons, notice or otherwise, shall be had to procure the answer and appearance of a defendant, as is had in other cases in chancery; but the plaintiff shall fully disclose in his bill of complaint all facts within his knowledge or information relating to the whereabouts of the defendant, and before or at the same time as the court shall grant a prayer for an order of publication or for other substituted service, the court shall direct that notice of the suit shall be mailed or otherwise directed to the defendant as the court may determine, so that if practicable the defendant may have actual knowledge of the suit and an opportunity to defend the same."

It will be remembered that in the Earl of Russell's case the earl was arrested in England for bigamy although the offense, viz., the second marriage, occurred in Nevada, and the house of lords universally decided that the English statute making a second marriage bigamy, whether it was celebrated in England "*or elsewhere*," applied to the Earl of Russell's case. One of the protections upon which persons who marry upon fraudulent divorces rely, is to be married on the face of the copy of the decree in some State and to at once leave that state forever. Such persons cannot be

arrested out of the state where they were married and the state where they were married has no interest in them and there is no probability of extradition proceedings. A question has been raised recently in the Botkin case as to whether one of the United States can punish an offense not committed within its boundaries; but it is very difficult to formulate any principle or find any statutory or constitutional provision to sustain such a contention which would affect the validity of a statute expressly providing a punishment for bigamy wherever the second marriage might have occurred. Statutes passed by the various states similar to the English statute might go far in preventing marriages based upon fraudulent decrees.

Baltimore, Md. DAVID STEWART.

PUBLIC LANDS—VALIDITY OF MORTGAGE OF HOMESTEAD ENTRY BEFORE PATENT.

WEBER v. LAIDLER.

Supreme Court of Washington, Sept. 17, 1901.

1. The United States statute providing that no lands homesteaded under the provisions of the act shall be liable for any debt contracted prior to the issuance of the patent, does not invalidate a mortgage on such lands executed by a homesteader before he acquires a patent, as such statute does not apply to voluntary incumbrances.

2. The United States statute prohibiting the alienation of a homestead before the patent is issued does not prevent the homesteader from mortgaging the land prior thereto.

This was a suit to foreclose a mortgage. Defendants set up defense that mortgage was invalid because made before he had any title to land and before he had patented it as a homestead. The case was decided in favor of plaintiff on demurrer.

HADLEY, J.: The only question presented by the record is, did the court err in sustaining the demurrer to the answer? The principle involved is, can one, before entering public lands, or before the patent issues therefor, execute a mortgage, which becomes a valid lien thereon if he subsequently acquires the title thereto? Appellants contend that such mortgages cannot be valid liens, by reason of the provision of section 2296 of the Revised Statutes of the United States. That section is as follows: "No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor." The decisions are not uniform in their interpretation of the full meaning of the above statute. They invariably agree that lands cannot be made liable for a debt contracted before the issuance of a patent therefor when it is sought to subject the land to the payment of such debt by any unwilling or involuntary appropriation thereof,—as by way of execution or attachment; but we believe the decided weight of authority in those states where the public domain has been subject to disposal since the passage of the above statute is in favor of sustaining a mortgage upon such lands upon the principle that the act of the mortgagor is voluntary, and he is estopped to deny its validity. The principle is too well established to call for discussion that, ordinarily, if one conveys or mortgages land to which he has then no title, his after-acquired title will inure to the benefit of his grantee or mortgagee. The same rule must apply here, unless prevented by the statute mentioned, and also by the further provision in the statutes of the United States which prohibits alienation of the land pending the period preceding final proof. As far as we are advised, this precise question has not hitherto been before this court. Appellants refer us to Jean v. Dee, 5 Wash. 580, 32 Pac. Rep. 460, as being decisive of the point. But that case appears to have involved a proceeding in attachment, and a levy and sale under execution. The validity of a mortgage upon such lands is not there discussed. We have been referred to a few decisions which hold that such a mortgage cannot be sustained by reason of the federal statute. Notably among these is the decision of the Supreme Court of Kansas in Brewster v. Madden, 15 Kan. 249. In the case of Biddle v. Adams (Kan. App.), 46 Pac. Rep. 986, the court says: "The only question which remains in this case is whether the law applied by the district court was correct. If the question were a new one, we should be strongly inclined, in a case of this kind, to hold in favor of the plaintiff in error; but the supreme court of this state has settled the law fully in the case of Brewster v. Madden, 15 Kan. 249. In that case the facts were very similar to those in the one under discussion, but it was there held that a mortgage given while title to the land was still in the United States was void. It is urged by counsel for plaintiff in error that that case ought not to be followed, for the reason that since its decision a more equitable doctrine has been laid down by the secretary of the interior of the United States; but our supreme court has followed the case of Brewster v. Madden in Mellison v. Allen, 30 Kan. 382, 2 Pac. Rep. 97, and, until a contrary doctrine is announced, we feel bound by the decisions of that court." It thus appears that the appellate courts of Kansas are not harmonious in their views upon this subject, and, if it were an original question in that state, a different rule might be adopted. The California supreme court has repeatedly held directly opposite to the doctrine of the Kansas court. Kirkaldie v. Larrabee, 31 Cal. 456, 89 Am. Dec. 205; Christy v. Dana, 34 Cal. 548; *Id.*, 42 Cal. 174; Camp v. Grider, 62 Cal. 20; Orr v. Stewart, 67 Cal. 275, 7

Pac. Rep. 693. The doctrine of the California court has also been adopted in the following cases: Dickerson v. Bridges (Mo. Sup.), 48 S. W. Rep. 825; Wilcox v. John (Colo. Sup.), 40 Pac. Rep. 880, 52 Am. St. Rep. 246; Stark v. Duvall (Okl.), 54 Pac. Rep. 453; Norris v. Heald, 12 Mont. 282, 29 Pac. Rep. 1121, 33 Am. St. Rep. 604; Fuller v. Hunt, 48 Iowa, 163; Spiess v. Neuberg, 71 Wis. 279, 37 N. W. Rep. 417, 5 Am. St. Rep. 211; Jones v. Yoakam, 5 Neb. 265; Lang v. Morey (Minn.), 42 N. W. Rep. 88, 12 Am. St. Rep. 748. The above cases proceed upon the theory that the exemption provided by the statute is meant to be a protection to the settler against the sale of the land involuntarily under execution, but that it does not prevent him from borrowing money, and voluntarily creating a lien by way of mortgage to secure the same. They also hold that a mortgage is not an alienation within the meaning of the statute, for the reason that it is not the purpose of a mortgage to pass absolute title. It is to be presumed that it is always the purpose of the mortgagor to pay the debt secured by his mortgage, and thus prevent an absolute title from accruing to the mortgagee. It is held that the inhibition of the statute is to prevent such a conveyance as intends that the title when acquired from the United States shall become the absolute title of another person than the settler, and that a mortgage is not such a conveyance, since it is only a mere possibility that such a title may grow out of the mortgage by reason of the default of the mortgagor to pay the debt. Following are some of the expressions of the decisions upon this subject: Kirkaldie v. Larrabee, *supra:* "The title will not pass merely in consequence of the enforcement of the payment of a debt by the ordinary process of the courts, but in consequence of the voluntary contract of the party in executing the mortgage. The mortgagor of the fee is estopped from denying the existence of the lien which he has attempted to create, and from defeating by his own act the enforcement of the lien against the property thus mortgaged." Dickerson v. Bridges, *supra:* "The exemption in favor of the homesteader found in section 2296, *supra:* 'that his land shall not become liable to the satisfaction of any debts contracted prior to the issuance of the patent therefor,' clearly was not intended to prevent him from creating by contract, for his own benefit, a special lien thereon. We think the obvious intention and meaning of that section is to protect the homesteader, and is in no sense a restraint upon him in the use of his land. Such is the universal rule of interpretation in construing exemption statutes, and such, we think, is the interpretation to be given section 2296 of the homestead act. The debts provided against by that section are those that may be enforced by general execution against the debtor, and not burdens imposed thereon by his own volition. We know of no instance where an exemption statute has been otherwise construed." Wilcox v. John, *supra:* "It has been held in a few cases that a mortgage or a deed of trust upon land is a grant or conveyance within the meaning of the statute, and consequently void. Brewster v. Madden, 15 Kan. 249; Brake v. Ballou, 19 Kan. 397; Ainsworth v. Miller, 20 Kan. 220. And this seems to have been the ruling of the land department at one time; but as early as 1882 Mr. Teller, the secretary of the interior, called attention to the unsoundness of the prior decisions of the department, and in a carefully prepared opinion held that the mere possibility of a title resulting for the benefit of another person—as in the case of a mortgage—was not sufficient to prevent the pre-emptor from obtaining patent. The rule then announced has, we think, been uniformly followed by the department since. It is founded upon sound reasons, and in practice it has not infrequently been of benefit to settlers in negotiating loans to carry them over periods of drought or of business depression, and should be maintained, if not inconsistent with the terms of the statute, as it is of the highest importance that the decisions of the courts in these matters should be in harmony with the rulings of the land department." Stark v. Duvall, *supra:* "It is also provided in section 2296 of the Revised Statutes of the United States (upon homesteads) that 'no lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.' This section does not prohibit the borrowing of money at the option of the homesteader. It prohibits the land being taken from him for the satisfaction of past indebtedness. It is intended as a protection to the homesteader, and not as a limitation upon his control over the land in disposing of or borrowing money upon it." Fuller v. Hunt, *supra:* "The first question presented is as to whether a person who has entered upon land under the homestead act can make a valid mortgage upon the same prior to the time when he is entitled to make final proof. It is claimed by the appellant that he cannot, because it is provided in the homestead act that the land shall not become liable to the satisfaction of any debts contracted prior to the issuance of the patent. The debt sought to be enforced was contracted prior to the issuance of the patent. It is abundantly evident that the land could not have been reached by general execution. If the land is liable at all, it is by virtue of the act by which the debtor undertook to create a special lien upon it, and we have to say that we think that the debtor's act had that effect. Mere exemptions from execution do not prevent the debtor from creating such lien. Exemptions are provided merely for the debtor's protection. Such is the general rule, and such, it appears to us, is the intention of the homestead act. The only reason suggested why the claimant under the homestead act should not be allowed to mortgage his homestead is that it would be against public interest. But the fact

that the act provides against alienation by the claimant, and does not provide against mortgaging unless alienation includes mortgaging (a point which will be hereafter considered), indicates that it was not deemed to be against the public interest that the claimant should mortgage his homestead." Spiess v. Neuberg, *supra:* "While the title remains in the United States, it is undoubtedly true that 'no lands acquired under the provisions of that law can in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.' Such is the statute. Section 2296, Rev. St. U. S. This court has held that prior to such issuance of a patent such lands were not liable to attachment, execution or mechanic's lien. Gile v. Hallock, 33 Wis. 523; Paige v. Peters, 70 Wis. 178, 35 N. W. Rep. 328, 5 Am. St. Rep. 156. In the case last cited it is said in the opinion, in effect, that the right of the occupant of such lands to mortgage his interest in the same does 'not come within the prohibition of the federal statutes cited.' That assertion is not only sustained by the authorities there cited, but others. * * * We are not aware of any adverse decision in the Supreme Court of the United States." Jones v. Yoakam, *supra:* "As to the first objection to this mortgage, we are of the opinion that it is not at all material when the debt was originally contracted, whether before or after making of the final proof of settlement, etc. * * * All that congress could have intended by this section [section 4 of the homestead act (12 Stat. 393, ch. 75)] was that the owner of such homestead should not be deprived of the land by virtue of legal process founded on a debt contracted before the patent had issued. It was not intended to do more than protect him against the compulsory payment of such a debt. Mark the language employed: 'No land * * * shall be liable,' etc.,—that is, bound or answerable in law or equity." Thus it appears that the overwhelming weight of authority is in favor of sustaining mortgages executed prior to the issuance of a patent.

NOTE.—*Right of Claimant of Public Lands Under Homestead Entry to Mortgage the Premises Before Final Proof.*—Although similar in most respects, entries upon public lands under pre-emption and homestead laws have some distinguishing features. The policy of the law in the latter case was to provide the settler with a home free from incumbrances or liability for debts at the end of the time necessary to perfect his title, it being against the spirit and policy of that law to allow the title in such cases to come to the settler already burdened. The supreme object of the homestead laws was a *free home.* The pre-emption laws, which was an older scheme, had principally in view the settlement of the unused public domain of the country—its principal object was commercial—to develop the country. But in making provisions for homestead entries, although this motive was also present, a higher purpose was evident,—a free home within the range of every citizen. That was the specific plank in political platforms of all parties for many years previous to the adoption of the original homestead law in 1862. The pre-emption laws had not satisfied the public. It was *free* homes, not revenue, which was desired in the disposition of the public domain, and after one of the hardest fought battles in our political history, the homestead laws became the law of the land. We have insisted so strongly on this distinction because we believe it has been lost sight of in the recent decisions like the principal case.

We have already observed that congress in making provisions for homestead entries had chiefly in view the opportunity of every citizen to possess a home free from all incumbrances or liability. It must have been evident to congress that few would take advantage of such privileges, considering the length of time necessary to perfect a title, except those of slight financial means or those who had less favorable prospects elsewhere. Congress, therefore, certainly had in mind the necessitous condition of such persons when it failed to make provision for the alienation or incumbrance of the unperfected claims of homestead entries. That it made no such provision or exception to the strict and all comprehensive language of section 2296 shows very conclusively that it was these very "necessities" of the homesteader that congress realized would tend to prevent him from ever acquiring a home if permitted in the first years of his struggle, and at the first slight pinch to burden or alienate his chance for a home. To permit such action on his part would very often result in transferring the public domain, set aside for homestead purposes, into the hands of money sharks and land speculators. The homesteader must, therefore, be protected, not only against the ordinary liabilities and burdens of owners of property, but also against himself, when in time of necessity or hardship he might be easily tempted or induced into alienating or incumbering his homestead.

The homestead legislation sprang immediately into popular favor and quickly superseded entries under the pre-emption law, although these two ran hand in hand until 1891 when the latter was repealed. The homestead law contains all that was really beneficial in the pre-emption law, with the addition, among other things, of section 2296, "a feature," according to Mr. Spaulding in his treatise on Public Lands, "as broad in its terms and as beneficial in its principle as the domain it covers." This section provided as follows: "No land acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor." This provision together with that prohibiting any alienation of the inchoate right of title, would seem to disclose an intention as clear as language could make it that congress did not intend homestead entries to become opportunities for speculation, but sought by every means possible to turn over to the faithful and honest settler a home free from all incumbrance or liability. That also was the construction given to this legislation by the earlier authorities who were in closest touch with the purpose of this legislation. McCue v. Smith, 9 Minn. 252; Brewster v. Madden, 15 Kan. 249; Webster v. Bowman, 25 Fed. Rep. 889.

The great change in the authorities on this point seems to be due, among other things, to a decision of the interior department, in the case of Larson v Weisbecker, 1 Dept. Int. 409, where the rule established by former secretaries was overruled by Mr. Teller, who held that unless it should appear that the title attempted to be conveyed by incumbrance or otherwise, *would* and not *might* inure to another person, it did

not debar the right of entry nor the perfecting of the title. "This law," said the secretary, "was intended to prevent speculative entries; but if a pioneer settler, struggling for a home for himself and family, is compelled by his necessities temporarily to mortgage his land, that he may *pay* for it and secure it to himself, and his good faith is manifest, I discover no reason why the government can reasonably object thereto, or that it is within the prohibition of the law." It will be observed that this decision refers only to pre-emption claimants who were subject to no such provision as section 2296, *supra*, and who were compelled to *pay* for their land, and, also, that it was merely the decision of a department officer making a rule for the guidance of the department toward the applicant in cases of forfeitnre for alienation. The decision was altogether in favor of the applicant. But immediately many state courts seized upon this decision as applicable to both pre-emption and homestead claimants, and accepted it as authority for them to extend the rule in either case so as to permit either pre-emptors or homesteaders to incumber their inchoate right to title without limitation. (See authorities cited in the principal case.) We cannot conceive of a more conspicuous instance of judicial legislation than this unwarranted extension of a simple department rule into a practical nullification not only of the intent but the letter of congressional legislation. The undoubted reason for this turn in the authorities, is not so much the good of the settler, as the selfish advantage of the states themselves to be derived from such a construction of the rule. It cannot be denied that this view of the law makes the settlement of such lands more desirable especially as opportunities for speculation. It would therefore draw more people into actual settlement and would serve to throw such lands "into circulation," so to speak, and thus bring them more quickly under the taxing power of the state. While these things may seem desirable, congress has not said so, and we are constrained to believe that if the question should ever come before the supreme court, the rule announced by the early authorities would necessarily be adhered to. Several not unimportant considerations seem to lend strength to this belief. It will be observed that the only federal decision on this question (Webster v. Bowman, 25 Fed. Rep. 889) is opposed to the position of the modern western authorities as announced in the principal case, and further, that the opinion of the Kansas court (Brewster v. Madden, *supra*), so much criticised by the court in the principal case, was argued and delivered by that exceedingly able jurist, Hon. David J. Brewer, now a member of the supreme court. For this reason, also, the views of Justice Brewer on this question would not be uninteresting: "This question is not free from difficulty. . . . It may be said that often a pre-emptor needs assistance to complete his payment, which assistance he can only obtain by giving the land itself as security, and that to deny him the use of the land for this purpose is against the spirit of the law. . . . We are inclined to favor the construction, that congress intended by this section, that when the title passed by the entry to the pre emptor, it should pass perfect and unincumbered."

ALEXANDER H. ROBBINS.

JETSAM AND FLOTSAM.

IS THE LAW DEAR?

"The great thing to be done," Baron Bramwell once said, addressing an audience of lawyers, "that which you ought all to seek to do, is to cheapen law—to cheapen the administration of the law. High costs, it is said, are a good thing in stopping a great deal of improper litigation. Yes, so they are; but they also stop a great deal of proper litigation." In the current number of the *Strand Magazine* are recorded the replies of a number of legal authorities to the question, "Is the Law too Dear?" They all agree with Lord Bramwell that the administration of justice should be cheapened, but they fail to indicate at all clearly how this desirable result can be achieved. Lord Davey merely expresses the view that "reductions could be made in the present scale of expenses." Lord Brampton, doubting "if the law is exceptionally dear to any of his majesty's subjects except the lawyers," is content to say that "it is too expensive for those who are compelled to embark in it." Sir Francis Jeune, while believing that the only remedy for the costliness of litigation lies in expediting the trial of cases and diminishing the number of appeals, describes the charges of solicitors in non contentious matters as "far too high." Mr. Fletcher Moulton, K. C., M. P., says: "As regards the general bulk of cases in the king's bench, a fruitful source of expense is the uncertainty as to their time of hearing, causing expensive witnesses to be kept waiting sometimes for days together," and here, at least, is one statement which will command full agreement. Mr. Robert Ellett, who also declares that "the law is too dear because of the defects in the present arrangements for trial," points out that "counsel's fees, and the fees of surveyors, engineers, and other experts frequently required in litigation are all more than they used to be," and warns the public against supposing that law can nowadays be cheap. This is the real conclusion of the whole matter, and Sir Francis Jeune perceives it as clearly as Mr. Ellett. "Do what one may," he says, "law will never be cheap. It involves too much exercise of trained ability and experience—to say nothing of integrity—for that."—*Solicitor's Journal.*

ILLINOIS JUVENILE COURT.

No more important question can be presented for consideration than that of the care, maintenance and education of neglected, dependent and delinquent children. A synopsis of the more important features of the juvenile court law of Illinois, and some facts concerning the administration and effect of this law in Chicago, were recently related by the Hon. O. H. Horton, LL. D., Judge of the Illinois Appellate Court. He said:

"The law was first enacted by the legislature in 1899 and went into effect July 1 of that year. It is entitled: 'An act to regulate the treatment and control of dependent, neglected and delinquent children.' It was re-enacted with some amendments by the legislature this year, and is here referred to as it now is. It applies only to children under the age of sixteen years. A 'dependent' or 'neglected' child is defined to be 'any child who for any reason is destitute or homeless or abandoned; or dependent upon the public for support; or has not proper parental care or guardianship; or who habitually begs or receives alms; or who is found living in any house of ill-fame or with any vicious or disreputable persons, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such a child; and any child under the age of ten years who is found begging, peddling or selling any article, or singing or playing any musical instrument upon the

street, or giving any public entertainment, or who accompanies or is used in aid of any person so doing.'

"A 'delinquent' child is defined to include: 'Any child under the age sixteen years who violates any law of this state or any city or village ordinance, or who is incorrigible, or who knowingly associates with thieves, vicious or immoral persons, or who is growing up in idleness or crime, or who knowingly frequents a house of ill-fame, or who knowingly patronizes any policy-shop or place where any gaming device is or shall be operated.'

"By the provisions of the act the juvenile court is given full and complete jurisdiction as to the disposition to be made of the child brought before it. It is provided that 'no court or magistrate shall commit a child under twelve years of age to a jail or police station, but if such a child is unable to give bail it may be committed to the care of the sheriff,' etc.

"Another provision is that 'the court in committing children shall place them as far as practicable in the care and custody of some individual holding the same religious belief as the parents of said child, or with some association which is controlled by persons of like religious faith of the parents of the said child.'

"The judges of the circuit court of Cook county designated Judge Richard S. Tuthill to take general charge of the juvenile court. He has met the responsibility thus imposed upon him with painstaking and earnest care, supported by a hearty desire to do good to unfortunate children. The execution and administration of this law in a large city requires more or less service from a large number of persons. Mr. Timothy D. Hurley is chief probation officer. He possesses rare qualification for that important position. There is no provision in the law for paying for the services of any one connected with its administration. Probation officers receiving compensation are mostly provided by clubs and charity organizations.

"The most beneficial effects of this law are not, and cannot be made, the subject of tables or statistics. These figures are, however, very significant, viz.: For the three years next preceding the establishment of the juvenile court in Chicago there were sent to the county jail 1,705 boys under the age of sixteen, an average of 568 per year. For the next two years after the adoption of this law the number of boys sent to the same jail is twenty-four, an average of twelve per year. It must not be understood that this law resulted in reducing the number of delinquent boys from 586 to twelve each year; but it reduced to that extent the number of boys disgraced, humiliated and placed within the influence of hardened criminals by being sent to the county jail. While a few of them may have reached that place later, yet it may be safely asserted that a large percentage was saved from what might otherwise have been a criminal life.'

"During the year ending July 1, 1901, there were before the juvenile court 1,071 dependent children and 1,021 delinquents, making a total of 2,092 as against 2,260 for the preceding year. Of the delinquents the causes of their being brought into court were: Incorrigibility, 153; truancy, 169; disorderly, 261; petit thefts, 374; the remainder were for offenses of greater or less magnitude. Of offenses against the person as distinguished from property there were but 59.

"The causes of dependence show reason for serious consideration of the questions presented. There were brought there by reason of the death of the mother, 198; by reason of the death of the father, 195—almost exactly equal. But for desertion by the mother, 72; while for desertion by the father, 301. By reason of the poverty of the mother, 229; while for the poverty of the father there were but 52. Taken there by reason of drunkenness of the mother there were 4, but because of the drunkenness of the father, 167. Sickness of the mother resulted in 60 dependents being taken there; sickness of the father, 17.

"City and county officials have been generous in their efforts to aid in a beneficial administration of this law. Twenty-one of the truant officers under the board of education have been commissioned probation officers by the court. They assist only in cases of truancy. To take charge of cases coming before the police courts, and to transfer children to the juvenile court, there have been appointed 16 police officers, who also assist the general probation officers more or less in their work of visitation. The court has also appointed 36 other persons to take charge of individual cases. They can hardly be considered as probation officers, as they seldom have been assigned more than one or two cases, and then because of special reasons.

"There are fifteen probation officers assigned to regular duty in the juvenile court, and in connection with the administration of the juvenile law, who are designated and paid by various societies and individuals, as follows: By the Visitation and Aid Society, six; by the Women's Club, three; by the following one each, viz.: South Side Women's Club, Hull house, Jewish charities, Illinois Industrial Association, Women's Protective Agency and Mrs. Lucy L. Fowler."

BOOK REVIEWS.

CYCLOPEDIA OF LAW AND PROCEDURE, VOL. 2.

The second volume of this very important work has just been issued. All the law in 35 volumes is the great enterprise the far-seeing publishers of this work have undertaken. This is the age of immense enterprises, and this one is not by any means the least among them. The volume before us begins with the subject of Affidavits and ends with Appeal and Error. Each topic of the law embraced in this volume may be said to be a *treatise*. The subjects and number of pages allotted to each and their authors are as follows: Affidavits, by E. A. Craighill, Jr., 37 pages; Affray by Chas. L. Lewis, 13 pages; Agriculture, by Gilbert Collins, 27 pages; Aliens, by Archibald C. Boyd, 56 pages; Alteration of Instruments, by John F. Dillon, 122 pages; Ambassadors and Consuls, by Basil Jones, 22 pages; Amicus Curiæ, by Arthur P. Will, 3 pages; Animals, by Samuel C. Bennett, 168 pages; Appeal and Error, by Walter Clark, 620 pages.

In each of above enumerated subjects are cited a larger number of cases relating to the text than will be usually cited in text books. The title of appeal and error is especially entitled to consideration, and partly because of its thoroughness and completeness, and partly because it is really, and, in fact, the only exhaustive and general work to be had in this country upon this most difficult subject, although the decisions run into the tens of thousands. We are informed that every line of this extensive title has had the personal scrutiny and sanction of that distinguished jurist and author, Judge Walter Clark, of the Supreme Court of North Carolina.

The title alteration of instruments, by Hon. John F. Dillon, is entitled to especial notice, as is anything prepared by this eminent jurist. An attorney who

may have this subject under investigation will scarcely need any other text-book to give him all obtainable information on the subject of alteration of instruments.

The title animals, hopelessly scattered under numerous headings in other law encyclopedeas, has received a complete and masterly treatment. This title is edited by the well known Dean of the Boston University Law School, Samuel C. Bennett, which is a sufficient guarantee of the work being well done.

These volumes of Cyclopedia of Law and Procedure are royal 8vo. in size. The present volume contains over 1,000 pages. The paper in volume 2 is somewhat thinner than in volume 1, making this volume somewhat less bulky than the first volume. They are well bound in law sheep, are edited by William Mack and Howard P. Nash, and published by The American Law Book Company, New York.

HUMORS OF THE LAW.

At a session of the United States court, held in Seattle, in the state of Washington, an attorney cited "Browne on Divorce," an authoritative work by William Hardcastle Browne, LL. D., of the Philadelphia Bar, who enjoys more than a national reputation as a learned and gifted author, both of law subjects and of literary works of the highest order. The attorney calling the author Brownie, the judge, whose name was Greene, asked how the author of the communication spelt his name. The counsel replied Browne. "Pronounce his name Brown not Brownie," said the judge. "Would you call my name Greenie because it is spelt with a final 'e?'" The lawyer replied, "That will depend upon your decision in the present case."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts

1. ACKNOWLEDGMENT—Sheriff's Certificate Cured.—Acknowledgment by county sheriff of certificate of foreclosure, erroneous in that he did not acknowledge it for himself in behalf of the sheriff, held cured by Rev. Codes, § 8585.—McCardia v. Billings, N. Dak., 87 N. W. Rep. 1008.

2. ADMINISTRATION—Land Sold for Debts.—Where purchaser of land from heirs sells it to various parties, and administrator bring ejectment to subject the land to judgment against it, purchaser from heirs held entitled to be reimbursed for payment of debt of decedent secured thereon.—Simpson v. Ennis, Ga., 39 S. E. Rep. 853.

3. APPEAL AND ERROR—Changing Theory.—Where a cause is tried by both parties on a certain theory, they will not be permitted to change such theory on appeal.—Illinois Cent. R. Co. v. Heisner, Ill., 61 N. E. Rep. 656.

4. APPEAL AND ERROR—Co-Defendant Not Appealing no Standing in Courts.—A co-defendant who has not appealed cannot be heard to attack the judgment on appeal by the other defendants.—Gager v. Paul, Wis., 87 N. W. Rep. 875.

5. APPEAL AND ERROR—Constitutionality of Statute.—Where constitutionality of statute is not raised below, it will not be considered on appeal.—Griffin v. Eaves, Ga., 39 S. E. Rep. 913.

6. APPEAL AND ERROR—Evidence Sustaining Verdict.—Where verdict was demanded by the evidence, error in instructions or denying right to open and close argument held no ground for reversal.—People's Sav. Bank v. Smith, Ga., 39 S. E. Rep. 920.

7. APPEAL AND ERROR—Failing to Object to Brief of Evidence.—In the absence of objection below to the correction of the brief of evidence accompanying a motion for a new trial, a motion to dismiss a writ of error because the brief was not approved by the trial judge will be denied.—Heard v. State, Ga., 39 S. E. Rep. 909.

8. APPEAL AND ERROR—Insufficiency of Evidence.—In reviewing decision on motion for new trial based on insufficiency of evidence, the court will only inquire whether there is evidence supporting the verdict.—Flath v. Casselman, N. Dak., 87 N. W. Rep. 988.

9. APPEAL AND ERROR—Joint Exceptions by Co-Defendants.—Joint exception by co-defendants to the sustaining of demurrers to separate answers held not sufficient basis of an assignment of error in sustaining demurrer to one particular answer.—Bonham v. McGeath, Ind., 61 N. E. Rep. 688.

10. APPEAL AND ERROR—Review of a Decree in Equity.—The supreme court will look into the evidence to determine the correctness of a decree in equity.—Bunker Hill Min. Co. v. Pascoe, Utah, 66 Pac. Rep. 574.

11. ARBITRATION AND AWARD—Award as a Condition Precedent to Action.—Where contract provides that no action shall be maintainable until after an award of damages for breach, the award is a condition precedent.—Fisher v. Merchants' Ins. Co., Me., 50 Atl. Rep 282.

12. ARREST—Arrest by Officer on Suspicion. — A policeman, hearing pistol shot at night, and thereafter discovering a man running from the direction of the shot, held to have the right to arrest him without a warrant.—Brooks v. State, Ga., 39 S. E. Rep. 877.

13. ARREST—Liability of Resisting.—One cannot be convicted of resisting an officer in an attempt to execute a warrant of arrest, unless he had notice of his authority.—Jones v. State, Ga., 39 S. E. Rep. 861.

14. ASSAULT AND BATTERY—Unaccompanied Threats.—On trial for assault, an instruction that words and threats, unaccompanied by physical effort to inflict injury, did not justify conviction, held improperly refused.—Penny v. State, Ga., 39 S. E. Rep. 871.

15. ASSIGNMENT FOR BENEFIT OF CREDITORS—Unrecorded Deed Passes no Title.—Unrecorded deed of

assignment for benefit of creditors passes no title.—Schloss v. Inman, Ala., 30 South. Rep. 667.

16. ATTACHMENT—Lien Lost by Including Non-Existing Claims.—An attachment lien held lost as to certain subsequent purchasers of attached property, owing to inclusion in judgment of claims not in existence at the commencement of suit.—Oconto Co. v. Esson, Wis., 87 N. W. Rep. 855.

17. ATTACHMENT—What Plaintiff Must Show.—In an action on an attachment bond, plaintiff must show that his property has been levied on under the writ in suit in which the bond was given.—Barnett v. Lucas, Ind., 61 N. E. Rep. 683.

18. ATTORNEY AND CLIENT—Action for Attorney's Fees.—Where client telephones attorney in regard to a certain matter "I want you to tend to everything and carry it clear through," and afterwards a contract for a definite fee was made, the attorney may recover although client abandons the matter.—Ottofy v. Keyes, Mo. App., decided at St. Louis Dec. 17, 1901, not yet reported.

19. BANKRUPTCY — Conflict of State and Federal Laws as to Preferences.—Where a preference is given under the state law and the latter comes in conflict with the national bankrupt law, the state law must yield; and the national law must govern though it conflict with the settled doctrine of the state.—Rosenfeld v. Siegfried, Mo. App., decided at St. Louis Dec. 17, 1901, not yet reported.

20. BANKRUPTCY—Oral Promise to Revive Debt.—Oral promise, reviving debt discharged in bankruptcy, must be unequivocal.—Smith v. Stanchfield, Minn., 87 N. W. Rep. 917.

21. BANKS AND BANKING—Enforcing Stockholders Liability.—Under Rev. St. 1898, § 2024, an action to enforce the liability of a stockholder in a bank on transfer of stock must be commenced within six months after transfer.—Gager v. Paul, Wis., 87 N. W. Rep. 875.

22. BENEFIT SOCIETIES—Lodge's Failure to Remit Member's Dues.—A subordinate lodge's failure to remit a member's dues cannot relieve a beneficiary association from liability on benefit certificate, though its by-laws make the subordinate lodge the member's agent.—Wagner v. Supreme Lodge Knights and Ladies of Honor, Mich., 87 N. W. Rep. 903.

23. BILLS AND NOTES—Release of Indorsers.—On a motion to revive a judgment on a note, held, that the indorsers derived no benefit from the indorsement and were released by an extension of time for payment being granted without their knowledge.—First Nat. Bank v. Swink, N. Car., 39 S. E. Rep. 962.

24. BILLS AND NOTES—Want of Consideration as a Defense to Subsequent Holder.—Want of consideration for a note not delivered to the payee held no defense in action by a holder to whom it was delivered for consideration.—Beach v. Bennett, Colo., 66 Pac. Rep. 567.

25. BONA FIDE PURCHASER—Prevailing over Voluntary Recorded Deed.—*Bona fide* purchaser for value held entitled to prevail over voluntary duly-recorded deed, unless actual notice is shown.—Scott v. Atlas Savings & Loan Assn., Ga., 39 S. E. Rep. 942.

26. BUILDING AND LOAN ASSOCIATIONS—Power to Borrow Money.—In the absence of statutory restriction, a building association has power to borrow money and to give its note therefor.—Marion Trust Co. v. Crescent Loan & Investment Co., Ind., 61 N. E. Rep. 688.

27. BURGLARY—Intent to Steal Specific Article.—Where an indictment charged breaking and entering with intent to steal a specific article, a verdict of guilty cannot stand where there was no proof that the article was in the house, or that accused thought it was.—Rush v. State, Ga., 39 S. E. Rep. 941.

28. CARRIERS—Failing to Stop at Passenger's Destination.—Passenger buying ticket on assurance that it stops at station where he desires to alight held entitled to damages, if expelled by conductor on ground that train does not stop at such station. — Atkinson v. Southern Ry. Co., Ga., 39 S. E. Rep. 888.

29. CARRIERS—Liability for Willful Negligence on Trespasser.—In an action against a railroad company for negligently killing plaintiff's decedent, evidence held to show willful negligence, so that plaintiffs could recover, even if decedent were not a passenger. —Alabama & V. Ry. Co. v. Beardsley, Miss., 30 South. Rep. 660.

30. CARRIERS—Limitation of Liability of Sleeping Car Company Inuring to Railroad.—A contract between a sleeping car company and an employee, releasing the sleeping car company and the transportation company from all liability for negligence, held to inure to the benefit of a carrier causing injury to such employee.—Russell v. Pittsburgh, C., C. & St. L. Ry. Co., Ind., 61 N. E. Rep. 678.

31. CARRIERS—Passenger Stealing a Ride.—Where conduct of passenger affords cause for believing that he was stealing a ride, his arrest by the conductor does not render the railroad company liable, though he was not, as a matter of fact, violating the statute. —Southern Ry. Co. v. Gresham, Ga., 39 S. E. Rep. 893.

32. CARRIERS—Wrongful Ejection Not Excused by Drunkenness.—In an action for a wrongful ejection from a train, evidence of plaintiff's drunkenness held not admissible in justification.—Raynor v. Wilmington S. C. R. Co., N. Car., 39 S. E. Rep. 821.

33. CARRIERS—Wrongful Expulsion of Passenger.—Failure of railroad company to have agent authorized to stamp return ticket present held to authorize the person holding ticket to board train without such stamp, and his expulsion therefrom entitles him to damages.—Southern Ry. Co. v. Wood, Ga., 39 S. E. Rep. 894.

34. CERTIORARI—Necessity of Giving Bond.—Writ of *certiorari*, unless sued out in *forma pauperis*, held void, where issued before applicant has given bond prescribed by statute.—Stover v. Doyle, Ga., 39 S. E. Rep. 939.

35. CERTIORARI—Reviewing Act of Town Board of Review.—*Certiorari* held not to lie to review act of town board of review in refusing application to abate personal property assessment.—State v. Town of Twin Lakes, Minn., 87 N. W. Rep. 925.

36. CONSTITUTIONAL LAW — Conflicting Sections.—Where an amended section of the constitution is repugnant to another, the original section is repealed. —Bray v. City Council of Florence, S. Car., 39 S. E. Rep. 810.

37. CONVICTS—Hiring Convicts to Other than Highest Bidder.—Where the board of supervisors have let a contract for the hiring of county convicts to one other than the highest bidder, equity will not enjoin its enforcement at the suit of the others.—Branton v. Board of Supvrs. of Washington Co., Miss., 30 South. Rep. 659.

38. CORPORATIONS—Duty of Stockholder in Seeking Redress.—The rule that stockholder must first seek redress through officers of corporation held not to apply where there is no governing body.—Sheridan Brick Works v. Marion Trust Co., Ind., 61 N. E. Rep. 666.

39. CORPORATIONS—Liability of Directors for Ultra Vires Acts.—Directors of a corporation organized under Gen. St. 1894, §§ 2805-2826, who authorize it to continue an *ultra vires* business, resulting in insolvency, held jointly and severally liable under Gen. St. 1894, § 2825.—Citizens' State Bank v. Story Specialty Mfg. Co., Minn., 87 N. W. Rep. 1016.

40. CORPORATIONS—Right to File Amendments.—Under Pub. Acts 1885, No. 232, the entire capital stock of a corporation must be subscribed in order to entitle the corporation to have amendments filed and recorded.—Continental Varnish & Paint Co. v. Secretary of State, Mich., 87 N. W. Rep. 901.

41. COSTS—Rehearing Because of Appellee's Negligence.—On denial of a motion for a rehearing, sought because appellee's briefs were inadvertently mislaid, appellee will not be subjected to costs of the motion.—Dowagiac Mfg. Co. v. Corbit, Mich., 87 N. W. Rep. 886.

42. COSTS—Unnecessary Matter.—Where plaintiff in error is compelled by court, at instance of defendant in error, to embody unnecessary matter in bill of exceptions, the cost will be taxed against defendant in error.—Weaver v. Stoner, Ga., 39 S. E. Rep. 874.

43. COUNTIES—Authority to Erect Court House.—County commissioners may erect a court house and levy taxes to pay for the same, not exceeding the constitutional limit, without being authorized so to do by special act of legislature.—Black v. Comrs. of Buncombe Co., N. Car., 39 S. E. Rep. 818.

44. CRIMINAL EVIDENCE—Invalid Confessions.—Advice to prisoner, under arrest by officer, that, if he knew anything, he had better tell it, vitiates a confession induced thereby.—Dixon v. State, Ga., 39 S. E. Rep. 846.

45. CRIMINAL EVIDENCE — Newly-Discovered Evidence.—Where correctness of verdict of guilty is to be most gravely doubted, a new trial should be granted for newly-discovered evidence which would probably result in a verdict of not guilty.—Fellows v. State, Ga., 39 S. E. Rep. 885.

46. CRIMINAL EVIDENCE—Opinions in Dying Declarations Not Admissible.—So much of a dying declaration as expressed a mere opinion as to the motive for the killing should have been excluded.—Feltner v. Commonwealth, Ky., 64 S. W. Rep. 959.

47. CRIMINAL TRIAL—Acquittal of One Crime Not a Bar to Another Arising Out of Same Transaction.—An acquittal on trial of an indictment under Comp. Laws, § 6491, for assault with intent to rob, held not a bar to a conviction of robbery by force under section 6481.—State v. Caddy, S. Dak., 87 N. W. Rep. 927.

48. CRIMINAL TRIAL—Bill of Exceptions.—Where a demurrer to indictment is overruled, a bill of exceptions must, under Civ. Code, § 5540, be tendered within 20 days from date of judgment.—Banks v. State, Ga., 39 S. E. Rep. 947.

49. CRIMINAL TRIAL—Carried on in Name of State.—All criminal proceedings must be carried on in the name of the state.—Worthen v. Johnson Co., Neb., 87 N. W. Rep. 909.

50. CRIMINAL TRIAL — Constitutionality of Indictment.—Where an indictment is insufficient to charge an offense, the question of the constitutionality of the act under which it was framed will not be reviewed.—Herring v. State, Ga., 39 S. E. Rep. 866.

51. CRIMINAL TRIAL—Indictment on Invalid Statute.—Objection that indictment is based on an invalid statute must be taken by demurrer or motion in arrest.—Boswell v. State, Ga., 39 S. E. Rep. 897.

52. CRIMINAL TRIAL — Irregularities in Selecting Grand Jury Must be Met by Plea in Abatement.—Objections to competency of and irregularities in drawing grand jurors must be taken advantage of by plea in abatement.—Tarrance v. State, Fla., 30 South. Rep. 685.

53. CRIMINAL TRIAL—New Trial on Circumstantial Evidence.—Where evidence is circumstantial, and does not establish beyond a reasonable doubt the guilt of accused, held error to refuse a new trial.—Laws v. State, Ga., 39 S. E. Rep. 883.

54. CRIMINAL TRIAL—New Trial Where Evidence Does not Preponderate.—Where the evidence creates only a base suspicion that accused committed the larceny alleged, and points as strongly to the guilt of others, held error not to grant a new trial.—Warner v. State, Ga., 39 S. E. Rep. 949.

55. CRIMINAL TRIAL—"Per Curiam" Affirmance of Conviction.—A person convicted of a capital felony held not prejudiced by the fact that the supreme court rendered a *per curiam* decision affirming the conviction.—State v. Council, N. Car., 39 S. E. Rep. 814.

56. CRIMINAL TRIAL—Proof of Abstract of Evidence at Committing Trial.—Parol evidence held not admissible to prove that a paper purporting to be an abstract of evidence given at a committing trial was an accurate report.—Cunning v. State, Miss., 30 South. Rep. 658.

57. CRIMINAL TRIAL—Testimony of Witness Violating Order of Exclusion.—Permitting state's witness to testify after remaining in the court room in violation of an order of exclusion held not reversible error.—Taylor v. State, Miss., 30 South. Rep. 657.

58. CRIMINAL TRIAL—Time of Appeal.—Under Burns Rev. St. 1901, §§ 1958, 1960, an appeal of a criminal prosecution held to date from notice, and not the filing of the transcript, so as to avoid the effect of the intermediate repeal of the statute authorizing the appeal.—Nichols v. State, Ind., 61 N. E. Rep. 694.

59. DAMAGES—Excessive Damages for Crippling.—A verdict for $2,500 for an injury rendering plaintiff a permanent cripple was not excessive.—Louisville & N. R. Co. v. Bowlds, Ky., 64 S. W. Rep. 957.

60. DAMAGES—Financial Condition of Defendant.—In an action for slander, evidence of the financial condition of defendant is inadmissible.—King v. Sassaman, Tex., 64 S. W. Rep. 987.

61. DEATH — Evidence of Receipt of Insurance Money.—In an action for wrongful death, evidence that plaintiffs had received money on insurance on decedent's life was inadmissible.—Lipscomb v. Houston & T. C. Ry. Co., Tex., 64 S. W. Rep. 928.

62. DEATH—Evidence that Deceased was a Saving Man.—Evidence that deceased was saving money at the time of his death held admissible to show damages.—Louisville & N. R. Co. v. York, Ala., 30 South. Rep. 676.

63. DEATH — Intentional Killing by Railroad Employee.—Rev. St. art. 3017, gives an action for an intentional killing by an employee of a railroad, committed in guarding its property and because of a mistake resulting from want of proper care.—Liscomb v. Houston & T. C. Ry. Co., Tex., 64 S. W. Rep. 928.

64. DEEDS—Proof of Lost Deed.—Secondary evidence of contents of lost deed must furnish satisfactory proof of its substantial parts.—Laster v. Blackwell, Ala., 30 South. Rep. 663.

65. DIVORCE—Additional Alimony for Children.—Although the judgment of divorce is final as to alimony in gross, it is not final as to the stipendiary allowance, and a divorced wife may at a subsequent term obtain an order for a greater allowance for the support of children.—Meyers v. Meyers, Mo. App. decided at St. Louis, Dec. 17, 1901, not yet reported.

66. DIVORCE—Appeal from Order for Attorney's Fees.—An appeal lies from an order allowing attorney's fees in divorce.—Schuster v. Schuster, Minn., 87 N. W. Rep. 1014.

67. DIVORCE—Excessive Alimony.—An allowance of $600 permanent alimony held not excessive.—Wagoner v. Wagoner, Mich., 87 N. W. Rep. 898.

68. DRUGGISTS—Compelling Approval of Druggist's Bonds.—Where a township board, acting under Comp. Laws 1897, § 5381, denies approval of druggist bond, *mandamus* will not lie to compel circuit judge, in proceeding to compel approval, to frame an issue as to whether the board acted in good faith.—Bailey v. Van Buren Circuit Judge, Mich., 87 N. W. Rep. 890.

69. ELECTIONS—Presumtion that Voter Established His Qualifications.—Presumption that voter established his qualifications for registration held to obtain on appeal from dismissal of petition to strike his name from registration books.—Davis v. O'Berry, Md., 39 S. E. Rep. 273.

70. ELECTRICITY—Prima Facie Case on Proof of Breaking of Wire.—Proof of the breaking of an electric

wire and of the happening of an injury therefrom makes a *prima facie* case against electric light company.—Boyd v. Portland Electric Co., Oreg., 66 Pac. Rep. 576.

71. EQUITY—Taking Advantage of Defects.—The only mode of taking advantage of defects in an answer is by written exceptions on the ground that it contains matter which is either scandalous or impertinent, or of its insufficiency in not answering fully the statements and allegations of the bill.—Barrett v. Twin City Power Co., U. S. C. C., D. S. Car., 111 Fed. Rep. 45.

72. ESTOPPEL — Silent as to Terms of Agency.—A principal held not estopped to deny liability on an independent contract of its agent by silence as to the terms of the agency.—Vail v. Northwestern Mut. Life Ins. Co., Ill., 61 N. E. Rep. 651.

73. EVIDENCE—Private Correspondence Not Admissible Without Proof of Genuineness.—A private letter is not admissible in evidence against the person by whom it purports to have been written, but who denies writing it without proof of its genuineness.—Lingg v. State, Ind., 61 N. E. Rep. 696.

74. EVIDENCE—Proof of Value.—Witness inventorying attached property held competent to testify as to its value.—Schloss v. Inman, Ala., 30 South. Rep. 667.

75. EVIDENCE—Telephone Message Where Voice is Unrecognized.—Telephone message from one whose voice was not recognized held inadmissible.—Vaughn v. State, Ala., 30 South. Rep. 669.

76. EXCEPTIONS, BILL OF.—A transcript of evidence, there being nothing to show that it was filed after signature by the judge, is insufficient as a bill of exceptions containing the evidence.—Allen v. Hamilton, Ind., 61 N. E. Rep. 665.

77. EXCEPTIONS, BILL OF—Extending Time in Vacation.—Presiding judge cannot, in vacation, extend time for bill of exceptions.—Alabama Mineral R. Co. v. Marcus, Ala., 30 South. Rep. 679.

78. EXCEPTIONS, BILL OF—Signed in Vacation.—Bill of exceptions may be signed in vacation, when an order to that effect is entered during the term.—Alabama Mineral R. Co. v. Marcus, Ala., 30 South. Rep. 679.

79. EXCEPTIONS, BILL OF—Signed in Vacation.—A bill signed in vacation cannot be considered, where no order therefor appears in the record.—Dantzler v. Swift Creek Mill Co., Ala., 30 South. Rep. 667.

80. EXECUTION—Inadequacy of Price.—Inadequacy of price, connected with mistake or other circumstances bringing about such inadequacy, held ground for setting aside execution sale.—Smith v. Georgia Loan & Trust Co., Ga., 39 S. E. Rep. 846.

81. EXECUTION—Redemption from Execution When Property is Sold for Taxes.—A purchaser of real estate at execution sale, who afterwards purchases the property at tax sale, does not thereby become a creditor of the judgment debtor, so as to require a redemptioner from the execution sale to pay the amount of the tax lien to effect a redemption.—Bender v. King, U. S. C. C., D. Mont., 111 Fed. Rep. 60.

82. EXECUTION — Year's Support Not Subject.—On trial of claim against execution issued on foreclosure of mortgage, held, that land set apart as a year's support was not subject thereto.—Derrick v. Sams, Ga., 39 S. E. Rep. 924.

83. EXECUTORS AND ADMINISTRATORS—Appealing Executor's Claim for Services.—So much of an order of a probate court allowing account of executor as adjudicates his claim for services may be appealed from without bringing up the entire order.—*In re* Kittson's Estate, Minn., 87 N. W. Rep. 1012.

84. EXECUTORS AND ADMINISTRATORS—Sale of Land for Debts.—An insolvent testator cannot, under Code Civ. Proc. § 2749, by devising real property charged with a specified debt, deprive general creditors of their right to have it sold to pay debts.—*In re* Richmond, N. Y., 61 N. E. Rep. 647.

85. FALSE PRETENSES—Future Promise.—A promise relating to the future cannot be a basis of prosecution for swindling.—Edge v. State, Ga., 39 S. E. Rep. 889.

86. FALSE PRETENSES—Parol Evidence.—Where one is charged with cheating by false representations that he was the owner of certain unincumbered property, held not error to charge that difference in description between the property conveyed and the incumbrance was explainable by parol evidence.—Rucker v. State, Ga., 39 S. E. Rep. 902.

87. FIRE INSURANCE—Liability of Agent for Wrongful Delivery of Policy by Subagent.—Insurance agent held liable for damage resulting from the delivery of a policy by a subagent contrary to directions of the company.—Franklin Fire Ins. Co. v. Bradford, Pa., 50 Atl. Rep. 286.

88. FIRE INSURANCE—Performance of Agreements to Arbitrate.—In an action on a policy of insurance providing for arbitration on account of loss, plaintiff must prove performance or a valid excuse for nonperformance.—Fisher v. Merchants' Ins. Co., Me., 50 Atl. Rep. 282.

89. FIRE INSURANCE—Policy Payable to Mortgagee.—Where a fire insurance policy is payable to the mortgagee in cases of loss, the mortgagee alone is entitled to sue.—Capital City Ins. Co. v. Jones, Ala., 30 South. Rep. 674.

90. FIXTURES—Opera House Fittings.—The fittings of an opera house building, consisting of stage appliances, drop curtain, and chairs attached to the floor by screws and nails, held to be fixtures, which passed to a purchaser of the building at execution sale.—Bender v. King, U. S. C. C., D. Mont., 111 Fed. Rep. 60.

91. FORCIBLE ENTRY AND DETAINER—Directing Verdict.—In a proceeding to eject intruders, the sole question being whether defendants claim the right to be on the land in good faith, held error to direct verdict for plaintiff.—Lane v. Williams, Ga., 39 S. E. Rep, 919.

92. FORCIBLE ENTRY AND DETAINER—Writ of Restitution, while Motion for New Trial Pending.—A writ of restitution issued while a motion for a new trial in forcible entry and detainer was pending is not void.—Rosenfield v. Barnett, Tex., 64 S. W. Rep. 944.

93. FRAUD AND DECEIT—Ignorance of Fact.—In the absence of misrepresentation or fraud, ignorance of fact, known to opposite party held not ground for relief, unless the injured party could have relied on the other for information.—Keith v. Brewster, Ga., 39 S. E. Rep. 850.

94. FRAUD—STATUTE OF—Non-Performance Within a Year.—Where by specific term of a contract it was not the intention of the parties to perform it within one year, the contract is void.—Reynolds v. First Nat. Bank, Neb., 87 N. W. Rep. 912.

95. FRAUDULENT CONVEYANCES—Assailing Conveyance After Ratification.—Where one has ratified a fraudulent conveyance, he cannot assail it on subsequently becoming a creditor of the fraudulent grantor.—Wooten v. Robins, Ala., 30 South. Rep. 681.

96. FRAUDULENT CONVEYANCES—Notice of Intent in Voluntary Conveyance.—Voluntary conveyance with intent to defraud subsequent creditors held void, though grantees had no notice of the intent.—Ayres v. Wolcott, Neb., 87 N. W. Rep. 906.

97. GARNISHMENT—Judgment Against Garnishee.—Judgment against garnishee held conclusive that plaintiff had already obtained a valid judgment against the main debtor.—Holbrook v. Evansville & T. H. R. Co., Ga., 39 S. E. Rep. 937.

98. GARNISHMENT—Striking Out Garnishee's Answer.—Where answer to garnishment is accepted over objection of plaintiff, and he files exceptions, he is bound thereby, and cannot at subsequent

term reopen the question by motion to strike garnishee's answer.—Stover v. Adams, Ga., 39 S. E. Rep. 864.

99. GAS—Refusal to Furnish Gas.—A gas company, which has been permitted to lay its pipes in the streets to furnish the citizens with gas, cannot refuse to furnish gas to a citizen whose premises are on its lines.—State v. Consumers' Gas Trust Co., Ind., 61 N. E. Rep. 674.

100. GRAND JURY—Discrimination Because of Color.—Motion to quash panel of grand jurors because of discrimination against persons of color does not lie, the proper practice being by plea in abatement to indictment.—Tarrance v. State, Fla., 30 South. Rep. 685.

101. GRAND JURY—Witness Compelled to Answer Incriminating Questions.—A witness before a grand jury investigating a charge of gaming may be compelled to answer, though he may testify as to a criminal act in which he participated.—Wheatley v. State, Ga., 39 S. E. Rep. 877.

102. HABEAS CORPUS—Dismissal Because of Remittitur.—Where a *remittitur* on appeal from *habeas corpus* proceedings had been received by the lower court and made the judgment of that court, held not error to dismiss *habeas corpus* proceedings and remand the prisoner.—Wiggins v. Tyson, Ga., 39 S. E. Rep. 865.

103. HABEAS CORPUS—Indicted Under Repealed Statutes.—One indicted under a repealed statute may be discharged on *habeas corpus*, if the validity of the statute was not passed on at the trial.—Griffin v. Eaves, Ga., 39 S. E. Rep. 913.

104. HABEAS CORPUS—Return of Writ.—Under Code Cr. Proc. art. 137, writ of *habeas corpus* granted by the court to which a change of venue has been taken in a criminal case should be made returnable to the court of the county where the offense was committed.—*Ex parte* Graham, Tex., 64 S. W. Rep. 932.

105. HIGHWAYS—Abutting Owners Suing Jointly for Damages.—The owners of lots of various widths and locations, abutting on a street in which a street railway has been unlawfully constructed, cannot sue jointly for damages in a gross sum.—Younkin v. Milwaukee Light, Heat & Traction Co., Wis., 87 N. W. Rep. 861.

106. HIGHWAYS—Consent to Obstruction.—Persons not interested in land over which a highway was constructed cannot object that the consent of the owners had not been obtained, in an action for the obstruction thereof.—Grace v. Walker, Tex., 64 S. W. Rep. 930.

107. HIGHWAYS—Fixing Boundaries.—Where the papers establishing a highway locate the point of commencement at a quarter section corner, such point should be located in accordance with the government field notes, under Hurd's Rev. St. 1899, p. 1685, ch. 133, § 5.—Town of Kane v. Farrelly, Ill., 61 N. E. Rep. 648.

108. HIGHWAYS—Road Commissioner Entitled to Compensation for Services of Team.—A road commissioner *de facto* can recover for labor of his own team employed by him with the consent of the selectmen.—Willey v. Inhabitants of Windham, Me., 59 Atl. Rep. 281.

109. HIGHWAYS—Road in Two Judicial District.—Where a road in more than one county runs in two judicial district, notices of petition need only be posted in the district where the petition was presented.—Forster v. Board of Com'rs of Winona County, Minn., 87 N. W. Rep. 921.

110. HOMESTEAD—Declaration as to "Actual Cash Value."—Under the statute requiring a declaration of homestead to contain a statement of the "actual cash value" of the premises, held error to allow complaint stating the "cost value" of the premises to be amended by giving the "cash value" without notice to defendant.—Tappendorff v. Moranda, Cal., 66 Pac. Rep. 491.

111. HOMESTEAD—Intentions of Husband on Removal.—Where a wife joins her husband in his absence from the homestead, his intentions fix the character of the removal.—Kramer v. Lamb, Minn., 87 N. W. Rep. 1024.

112. HOMICIDE—Negligent Treatment of Wound.—Accused will not be relieved of responsibility for the death of deceased because of negligence in the treatment of a mortal wound or unskillful treatment of a wound not necessarily mortal.—Downing v. State, Ga., 39 S. E. Rep. 927.

113. HOMICIDE—Resisting Arrest.—Where officer attempts to make a justified arrest without a warrant, and is killed by the person whom he seeks to arrest, it is murder.—Brooks v. State, Ga., 39 S. E. Rep. 877.

114. HOMICIDE—Self-Defense.—On trial of one charged with assault with intent to murder, it was error to charge that, if the prosecutor struck the accused with his fist, intending no felony, and the accused used a weapon likely to produce death, he was guilty of the offense.—Heard v. State, Ga., 39 S. E. Rep. 909.

115. HUSBAND AND WIFE—Abrogation of Community Property.—Civ. Code, § 575, held not to repeal section 164, nor abrogate the rule that property acquired by a husband and wife after marriage shall be presumed community property.—Rowe v. Hibernia Savings & Loan Soc., Cal., 66 Pac. Rep. 569.

116. HUSBAND AND WIFE—Confidential Conversation May be Proved by Eaves-Dropper.—Conversation between husband and wife, though intended to be confidential, may be proven by one overhearing it.—Knight v. State, Ga., 39 S. E. Rep. 928.

117. HUSBAND AND WIFE—Proof of Separate Property by Declarations in Wife's Will.—Upon the issue of whether money deposited by a deceased married woman in her own name is separate or community property, declarations in her will without the knowledge of her husband are not admissible.—Rowe v. Hibernia Savings & Loan Soc., Cal., 66 Pac. Rep. 569.

118. INJUNCTION—Threatening Manner of Striking Workmen.—Acts of striking workmen in threatening and menacing other workmen, by the employment of pickets and otherwise, held unlawful and to entitle the employer to an injunction.—Southern Ry. Co. v. Machinists' Local Union No. 14, U. S. C. C., W. D., Tenn., 111 Fed. Rep. 49.

119. INSANE PERSONS—Liability on Contracts.—Ignorance of one party to the contract that the other was insane held not of itself to entitle the former to enforce it against the latter.—Woolley v. Gaines, Ga., 39 S. E. Rep. 892.

120. INSURANCE—Right to Insurance Obtained While Debtor was Insolvent.—The fact that a married man was insolvent when he obtained life insurance in favor of his wife and children, where the premiums paid were moderate and there was no actual fraud, does not entitle his creditors to claim any part of the proceeds of such insurance as against his widow and children.—Masonic Mut. Life Assn. v. Paisley, U. S. C. C., W. D., Pa., 111 Fed. Rep. 32.

121. INSURANCE—Secret Instruction of Insurance Agents.—Authority of insurance agents must be determined by the nature of the business, and secret instructions, not known to those dealing with the agent, are not binding.—Robinson v. Ætna Ins. Co., Ala., 30 South. Rep. 665.

122. INSURANCE—Waiver of Forfeiture by Acceptance of Premiums.—Habitual acceptance of premiums by insurance company after they are due estops it from enforcing a forfeiture for default in prompt payment.—Modern Woodmen of America v. Tevis, U. S. C. C. of App., Eighth Circuit, 111 Fed. Rep. 113.

123. INTOXICATING LIQUORS—Conflict of General and Special Legislation.—Where accused was convicted under the general domestic wine act of February 27, 1877, his conviction was legal, where the special act

for the county in which conviction was had was illegal.—Griffin v. Eaves, Ga., 39 S. E. Rep. 913.

124. INTOXICATING LIQUORS—Express Company Collecting C. O. D.—An express company delivering a package of whisky shipped C. O. D., and collecting the price, held liable for an illegal sale thereof.—Southern Exp. Co. v. State, Ga., 39 S. E. Rep. 899.

125. INTOXICATING LIQUORS—Limiting Night Hours.—Ordinance prohibiting keeping saloons open after 11 o'clock at night held valid.—City of Jordan v. Nicolin, Minn., 87 N. W. Rep. 915.

126. INTOXICATING LIQUORS — Sales by Pharmacist.—Sales of liquor by pharmacist at a place other than that for which the petition was granted held unlawful, though permit does not specify the particular place for which issued.—State v. Hilliard, N. Dak., 87 N. W. Rep. 980.

127. JUDGES—Disqualified by Affidavits of Prejudice.—Where a resident judge, after disqualification by filing affidavits of prejudice, appoints a receiver in the action, the order is void.—Orcutt v. Conrad, N. Dak., 87 N. W. Rep. 982.

128. JUDGMENT — Collateral Attack of Erroneous Judgments.—Judgments which are erroneous and not void cannot be collaterally impeached.—Nichols & Shepard Co. v. Paulson, N. Dak., 87 N. W. Rep. 977.

129. JUDGMENT—Damages for Taking Property Does Not Bar Action for Taking.—That judgment in claim and delivery awarding damages to defendants for the taking of the property does not impair their right to recover the property or its value, also given by the judgment.—Nichols & Shepard Co. v. Paulson, N. Dak., 87 N. W. Rep. 977.

130. JUDGMENT—Defenses on Motion to Revive.—Under Code, § 440, defenses arising since the entry of a judgment held available on a motion to revive the same.—First Nat. Bank v. Swink, N. Car., 39 S. E. Rep. 962.

131. JUDGMENT—Judgment on Demurrer Not a Bar.—Where judgment is rendered for defendant on demurrer to petition, because brought before right of action accrues, the judgment is not a bar in a suit subsequently brought by defendant against plaintiff in former action.—Satterfield v. Spier, Ga., 39 S. E. Rep. 930.

132. JUDGMENT—Pleading a Judgment.—Under the Civil Code of Practice, in pleading a judgment, there must be either an allegation that the order was duly made or an allegation of the jurisdictional facts.—Potter v. Lewis, Ky., 64 S. W. Rep. 958.

133. JUDGMENT—Reviewing Judgment after Limitation.—Bringing suit to revive dormant judgment after three years prescribed by statute held not to deprive court of jurisdiction, limitation being matter of defense.—Milner v. Steel, Ga., 39 S. E. Rep. 890.

134. JURY—Color of Disqualification.—The laws of the state do not disqualify any person on account of color, race, or previous condition of servitude, nor authorizing any discrimination therefor.—Tarrance v. State, Fla., 30 South. Rep. 685.

135. LABOR — Licensing of Immigrant Agents.—Nonresident, employing on his own account laborers to work outside the state, held not an immigrant agent, within the meaning of the law imposing a tax on such agents.—Theus v. State, Ga., 39 S. E. Rep. 913.

136. LANDLORD AND TENANT—Immaterial Evidence.—When the only issue was whether the relation of landlord and tenant existed, the question of title being immaterial.—Slaughter v. Crouch, Ky., 64 S. W. Rep. 968.

137. LANDLORD AND TENANT—Inurement of Judgment in Tenant's Favor.—Judgment in ejectment suit in favor of a tenant in possession held not to inure to the benefit of the landlord.—Loftis v. Marshall, Cal., 66 Pac. Rep. 571.

138. LARCENY — Sufficient Proof.—Where evidence shows that possession by accused of stolen goods was not recent, and that the articles stolen were such as could readily pass from hand to hand, presumption of guilt held insufficient to sustain conviction.—Turner v. State, Ga., 39 S. E. Rep. 868.

139. LIBEL AND SLANDER—Calling One a "Thief."—A declaration in slander for calling plaintiff a thief held sufficient, without specifically describing the property alleged to have been taken.—McLeod v. Crosby, Mich., 87 N. W. Rep. 883.

140. LIBEL AND SLANDER—Imputing Want of Chastity.—In an action for slander, based on statements imputing a want of chastity to plaintiff, evidence of her good reputation for chastity is admissible.—King v. Sassaman, Tex., 64 S. W. Rep. 937.

141. LIMITATION OF ACTIONS — Commencement of Statutes Operation.—Limitation held to run in favor of the transferee and occupant of land transferred in fraud of creditors from the time such creditors might have learned of the transfer by the exercise of ordinary diligence.—Moore v. Brown, Tex., 64 S. W. Rep. 946.

142. LOANS—Knowledge of Borrower's Illegal Purpose.—That a lender of money to a corporation has knowledge that the borrower intends to use it for an unauthorized purpose will not defeat his right to enforce a note given therefor, unless he participated in such unauthorized use.—Marion Trust Co. v. Crescent Loan & Investment Co., Ind., 61 N. E. Rep. 688.

143. MALICIOUS PROSECUTION—Journal Entries of Court as Evidence.—In an action for malicious prosecution, a certified copy of part of the journal entries in the criminal case held admissible, though not including formal judgment of not guilty and the discharge of the prisoner.—McLeod v. Crosby, Mich., 87 N. W. Rep. 883.

144. MANDAMUS—Citizen's Right to Compel Removal of Street Stand.—A citizen of the city of New York may maintain a writ of *mandamus* to compel the commissioner of highways to remove a stand on a street of said city.—People v. Keating, N. Y., 61 N. E. Rep. 687.

145. MARRIAGE—Presumption of Divorce in Order to Sustain Subsequent Marriage.—In order to prevent a married woman from recovering for the negligent killing of her husband on the ground that their marriage was void, because decedent had a wife living at the time, defendant must prove that there had been no divorce, as otherwise the court will presume one, in order to uphold the marriage.—Alabama & V. Ry. Co. v. Beardsley, Miss., 30 South. Rep. 660.

146. MASTER AND SERVANT—Contributory Negligence as a Defense to a Willful Wrong.—Contributory negligence is no defense to a count in an action under the employer's liability act for willful or intentional wrong.—Louisville & N. R. Co. v. York, Ala., 30 South. Rep. 676.

147. MASTER AND SERVANT — Dangerous Condition of Premises.—Where the master placed a saw and another machine dangerously close, and an employee was compelled to pass between them with a load in his arms, the regular passageway being filed up, and was injured thereby, he was entitled to recover.—Myers v. Concord Lumber Co., N. Car., 39 S. E. Rep. 960.

148. MECHANIC'S LIEN—Character of Work or Material Must be Shown.—Where neither the lien account nor the lien declaration intimate the purpose of the excavating alleged to have been done, it is insufficient.—O'Shea v. O'Shea, Mo. App., decided at St. Louis, Dec. 17, 1901, not yet reported.

149. MECHANICS' LIENS — Liability of Married Woman's Property in Hands of Purchaser.—Where a married woman proceeds in good faith to sell her separate property, it is not liable to be charged in the hands of the purchaser for labor and materials for its improvement by her.—Smith v. Gauby, Fla., 30 South. Rep. 683.

150. MECHANICS' LIENS—One in Possession Under

Contract of Purchase.—One in possession of land under a written contract to purchase is not the owner, within Rev. St. art. 3294, relating to mechanics' liens. —Faber v. Muir, Tex., 64 S. W. Rep. 988.

151. MECHANICS' LIENS — Reviewable by Appeal.—A suit to enforce and foreclose a mechanic's lien being a suit in equity, the decree rendered is reviewable by appeal, and not by writ of error.—Hooven, Owens & Rentschler Co. v. John Featherstone's Sons, U. S. C. C. of App., Eighth Circuit, 111 Fed. Rep. 81.

152. MINES AND MINERALS—Denying Landlord's Title Where Mineral is Discovered on Adjoining Claim.—Where plaintiff occupied a mining claim under a lease, he was estopped to deny the landlord's title on the ground that the only discovery of mineral thereon was at the discovery point of another claim.—Bunker Hill Min. Co. v. Pascoe, Utah, 66 Pac. Rep. 574.

153. MORTGAGES—Defenses to Action for Surplus.—In an action to recover surplus on mortgage foreclosure, a defense that a second mortgagee was entitled to the same held not available, where such mortgagee was not a party.—Itasca Inv. Co. v. Dean, Minn., 87 N. W. Rep. 1020.

154. MORTGAGES—Failure to Sell Both Lots Under Mortgage.—Where, on foreclosure, by mistake, one lot was not advertised or sold, and plaintiff purchased, bidding the amount of his judgment, the sale will not be set aside for mistake of fact.—Keith v. Brewster, Ga., 39 S. E. Rep. 850.

155. MORTGAGES—Legal Title Pending Foreclosure.—Legal title of mortgaged realty remains in mortgagor pending confirmation of foreclosure sale.—Hatch v. Shold, Neb., 87 N. W. Rep. 908.

156. MORTGAGE—Protection.—Holder of mortgage to secure land held entitled to the same protection as holder of deed of bargain and sale.—Scott v. Atlas Savings & Loan Assn., Ga., 39 S. E. Rep. 942.

157. MUNICIPAL CORPORATIONS—Child Drowning in Sewer.—City held not liable for death of child drowned in sewer, due to his playing in the drain just after a heavy rain.—City of Rome v. Cheney, Ga., 39 S. E. Rep. 938.

158. MUNICIPAL CORPORATIONS—Constitutional Provisions Limiting Bonded Debt Removed.—Act of legislature limiting bonded debt of municipalities as provided by constitution held not operative after such limitations to the constitution is removed by amendment.—Bray v. City Council of Florence, S. Car., 39 S. E. Rep. 810.

159. MUNICIPAL CORPORATIONS—Liability for Exposing Prisoner to Smallpox.—A city is not liable to one who was arrested, under the statute, on the ground of having been exposed to smallpox, where the officers acted without malice.—Levin v. City of Burlington, N. Car., 39 S. E. Rep. 822.

160. MUNICIPAL CORPORATIONS—Limited to Amount Claimed.—In action for injuries caused by a defective street, injured party is not limited in his recovery to the amount claimed in his notice.—Teryll v. City of Faribault, Minn., 87 N. W. Rep. 917.

161. MUNICIPAL CORPORATIONS — Requirement of Written Notice of Claim.—Detroit City Charter, ch. 11, § 46, as amended (Loc. Acts 1895, No. 463), requiring written notice of claim for negligent injuries as a condition precedent for an action against the city, being in derogation of common right, should be strictly construed.—Tattan v. City of Detroit, Mich., 87 N. W. Rep. 894.

162. MUNICIPAL CORPORATION—Right to Issue Commercial Papers.—A municipal corporation has no power, except by statute, to issue commercial paper, and without such power its paper is void even in the hands of a *bona fide* holder.—Coquard v. Village of Oquawka, Ill., 61 N. E. Rep. 660.

163. NEGLIGENCE—Intervening Agencies.—Use with notice of defective electric lamp held to be an intervening agency so as to save an electric company from liability for injuries therefrom.—Griffin v. Jackson Light & Power Co., Mich., 87 N. W. Rep. 888.

164. NEW TRIAL—Discretion of Court.—Grant of new trial, is not appearing that the verdict was demanded by the law and the evidence, held in the discretion of the court.—Baird v. Bate, Ga., 39 S. E. Rep. 943.

165. NEW TRIAL — Failure to Summon all of Special Venire.—Sheriff's failure to summon all of the special venire in a criminal case held not ground for a new trial.—Taylor v. State, Miss., 30 South. Rep. 657.

166. NEW TRIAL — Grounds for Orders not Stated.—Where an order granting a new trial is silent as to the grounds, it will be affirmed if justified on any ground on which the motion was predicated.—State v. Foster, Mont., 66 Pac. Rep. 565.

167. NEW TRIAL—Relationship of Juror to Accused.—New trial will not be granted because of relationship of juror to accused, though it is unknown until after verdict.—Downing v. State, Ga., 39 S. E. Rep. 927.

168. NONSUIT—Reviewing Rulings After Nonsuit.—In order to review rulings after nonsuit, it must appear that the nonsuit was taken because of such rulings.—Laster v. Blackwell, Ala., 30 South. Rep. 668.

169. PARTITION — Attorneys' Fees.—In action for partition, allowance of attorney's fees is in the discretion of the trial court.—Hanson v. Ingwaldson, Minn., 87 N. W. Rep. 915.

170. PAYMENT—Payment by Check to Avoid a Forfeiture.—Delivery of check to a bank for lessor, who was out of town, held a valid payment, preventing forfeiture of the lease.—Sayers v. Kent, Pa., 50 Atl. Rep. 296.

171. PHYSICAN AND SURGEON — Practicing Dentistry Without License.—Indictment charging practicing dentistry without a license should aver that accused was in the class as to which the practice was made penal.—Herring v. State, Ga., 39 S. E. Rep. 866.

172. PLEADING—Striking Out as Frivolous.—On motion to strike out portions of an answer as frivolous, the court can only inquire whether the matter sought to be eliminated is relevant to the issues.—Kidder County v. Foye, N. Dak., 87 N. W. Rep. 984.

173. PRINCIPAL AND AGENT—Exceeding Authority.—Agent, authorized to give buyer option to purchase lands at a price, cannot consent to conditional acceptance of terms after time limited has expired.—Larned v. Wentworth, Ga., 39 S. E. Rep. 855.

174. PRINCIPAL AND SURETY — Misrepresentation as Defense.—In action on note a plea of surety setting up misrepresentations as to consideration on which the note was based held to state a good defense. —Satterfield v. Spier, Ga., 39 S. E. Rep. 930.

175. PRINCIPAL AND SURETY—Note Given to Defraud Creditors as a Defense to Surety.—It is a good defense for sureties on a note that without their knowledge, but to the knowledge of the payee, it was given to defraud creditors.—Goodwin v. Kent, Pa., 50 Atl. Rep. 290.

176. PROCESS — Service on Foreign Corporations.—Under Code, § 217, subsec. 1, service can be had on a foreign corporation, engaged in repairing electric lights, by delivering a copy of the summons on one who had oversight of all the work and general charge of the employees.—Clinard v. White, N. Car., 39 S. E. Rep. 960.

177. RAILROADS — Construction of Act as to Parallel Lines.—Civ. Code, § 2176, relating to parallel railroad lines, held to apply only where the railroad companies involved connect the same terminal points.—Hawkinsville & F. S. Ry. Co. v. Waycross Air Line R. Co., Ga., 39 S. E. Rep. 844.

178. RAILROADS—Stock Gap.—Where there was no negligence in maintenance of stock gap, in passing over which plaintiff's mule was injured, plaintiff cannot recover.—Southern Ry. Co. v. Watson, Ga., 39 S. E. Rep. 947.

179. RECEIVERS—Contempt. — Where receiver disobeys order of court, and converts property to his own use, he may imprisoned for contempt.—Tindall v. Nisbet, Ga., 39 S. E. Rep. 849.

180. RECEIVERS — Recovery of Fund in Receiver's Hands.—Where there is a fund of money on hand where foreclosure proceedings are filed against a street railroad and afterwards a receiver is appointed into whose charge this fund with other property is transferred, the bondholders bringing foreclosure are not entitled to the whole fund.—Rumsey v. People's Railway Co., Mo. App., decided Dec. 17, 1901, not yet reported.

181. RECOGNIZANCES— Parties. — Recognizance payable to governor of Georgia held a contract to which the state and the principal and sureties executing the bond are the only parties.—Adams v. Candler, Ga., 39 S. E. Rep. 893.

182. REGISTRATION—Judgment Improperly Indexed is not Notice.—Judgment lien improperly indexed and afterwards corrected, held inferior to a mortgage recorded after the indexing of the judgment, but before its correction.—Pennsylvania Sav. Fund & Loan Assn. v. George & Co., Pa., 50 Atl. Rep. 300.

183. SALES—Recovery of Freight Charges.— In an action for damages for refusal to accept goods sold, plaintiff can recover freight charges paid by him.—Minneapolis Threshing Mach. Co. v. McDonald, N. Dak., 87 N. W. Rep. 993.

184. SALVAGE—Reasonable Care of Property.—Salvors are responsible for reasonable care of the property which they have in charge, both as respects damage to the property itself and the infliction of damage on other property.—The Bremen, U. S. D. C., S. D. N. Y., 111 Fed. Rep. 228.

185. STATUTES—Special Acts not Barred by General Law.—The general railroad law for incorporating railroads held not to deprive general assembly of right to grant special charter, as being special acts.—Hawkinsville & F. S. Ry. Co. v. Waycross Air Line R. Co., Ga., 39 S. E. Rep. 844.

186. SUBROGATION — Purchaser from Heirs. — Purchaser of land from heirs, paying debt of decedent secured thereon, held subrogated to the rights of the creditor.—Simpson v. Ennis, Ga., 39 S. E. Rep. 853.

187. SUNDAY — Execution of Recognizance. — Recognizance executed on Sunday held not invalid.—Adams v. Candler, Ga., 39 S. E. Rep. 893.

188. TAXATION— Reimbursement on Setting Aside Tax Decree.—In proceedings to set aside a decree for the sale of non-exempt land for unpaid taxes, the decree, though entered without jurisdiction, should not be vacated until the petitioner has reimbursed the purchaser.—Aztec Copper Co. v. Auditor General, Mich., 87 N. W. Rep. 895.

189. TRIAL—Arguments of Counsel.—In an action for personal injuries, the defense being that the claim was a fraudulent one, with evidence that plaintiff and family had other like actions pending, argument on such evidence by counsel held legitimate.—Wheeler v. Detroit Electic Ry. Co., Mich., 87 N. W. Rep. 886.

190. TRIAL—Instructions in Issues of Fact.—The court should not instruct for the defendant on an issue of fact, if there is evidence which, with all inferences to be properly drawn therefrom, fairly tends to prove plaintiff's cause of action.—Illinois Cent. R. Co. v. Heisner, Ill., 51 N. E. Rep. 656.

191. TRIAL —Refusal to Direct Verdict.—Refusal to direct verdict for defendant held proper, where the evidence is not conclusively in plaintiff's favor.—Kurstelska v. Jackson, Minn., 87 N. W. Rep. 1015.

192. TRIAL AND PROCEDURE—Improper Language of Counsel.—Use of improper language by attorney for state held not cause for new trial, where it could have done no injury.—Hoxie v. State, Ga., 39 S. E. Rep. 944.

193. TRIAL AND PROCEDURE—Motion For New Trial.—Where trial court did not grant a new trial for any of the reasons stated in the motion, this amounts to overruling the motion.—Vastine v. Rex, Mo. App., decided at St. Louis, Dec. 17, 1901, not yet reported.

194. TRIAL AND PROCEDURE—Newly-Discovered Evidence.— Where newly-discovered evidence will not probably bring about a different result, refusal of new trial held not error.—Pitts v. State, Ga., 39 S. E. Rep. 873.

195. TRUSTS—Cross Petitions in Cases of Removal.—On petition to remove trustee appointed under a will, where defendant files cross bill and asks that his rights shall be determined, the court must pass, not only on the question of removal, but on the prayer of the cross petition.—Crowley v. Crouch, Ga., 29 S. E. Rep. 904.

196. USURY—Mistake in Computation of Interest.—Mistake in computation of interest held not to render contract for that reason usurious.—Dodds v. McCormick Harvesting Mach. Co., Neb., 87 N. W. Rep. 911.

197. VENDOR AND PURCHASER—Enforcing Options.—Specific performance of option to sell lands denied for failure to accept unconditional terms within the time limited.—Larned v. Wentworth, Ga., 39 S. E. Rep. 855.

198. VENDOR AND PURCHASER—Partial Failure as a Defense.—A plea by maker of notes given for land, setting up partial failure for the reason of a conveyance of part of the land to other parties, held to set forth good defense.—Satterfield v. Spier, Ga., 39 S. E. Rep. 930.

199. VENDOR AND PURCHASER—Performance of Option Contracts.—One holding option to purchase lands within a stated time must perform or offer to perform the conditions within the time limited.—Larned v. Wentworth, Ga., 39 S. E. Rep. 855.

200. WATERS AND WATER COURSES—Damages Where Owner of Water Power was not Damaged.—Fact that owner of water power had not mean of utilizing such power held not to relieve one wrongfully appropriating such power from responding in damages.—Green Bay & M. Canal Co. v. Kaukauna Water Power Co., Wis., 87 N. W. Rep. 864.

201. WATERS AND WATER COURSES — Unlawful Diversion of Water.—An indictment under the statute for unlawful diversion of a stream from its course, to the injury of others, need not charge injury to more than a single individual.—Armfield v. State, Ind., 61 N. E. Rep. 693.

202. WEAPONS—Concealed Weapons in Home.—Pen. Code, § 341, prohibiting the carrying of concealed weapons, prohibits such carrying within the limits of his own home.—Brown v. State, Ga., 39 S. E. Rep. 873.

203. WEAPONS—Right of Private Watchman to Carry Pistol.—A private night watchman, carrying a pistol concealed about his person, held not guilty of carrying concealed weapons, under Code, § 1005.—State v. Anderson, N. Car., 39 S. E. Rep. 824.

204. WILLS— Revocation Because of Adoption of Child.—Under Rev. St. 1898, ch. 178, §§ 4021-4024, the adoption of a child has the same effect as birth of issue as regards the revocation of the adopted parent's previously executed will.—Glascott v. Bragg, Wis., 87 N. W. Rep. 853.

205. WITNESSES—Communications Between Attorney and Client.—Communication by prisoner under arrest to attorney cannot be proven by the testimony of the attorney.—Haywood v. State, Ga., 39 S. E. Rep. 948.

206. WITNESSES—Disobeying Order of Exclusion.—A witness may be permitted to testify, though he had disobeyed an order for the exclusion of witnesses.—Hoxie v. State. Ga., 39 S. E. Rep. 944.

207. WITNESSES—Impeachment.—Where accused attempts to impeach prosecuting witness by contradictory statements out of court, the state may show in rebuttal that, before the contradictory statement, witness made statements consistent with his testimony at the trial.—State v. Caddy, S. Dak., 87 N. W. Rep. 927.